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USE OF ENVIRONMENTAL ANALYSES ON WASTEWATER FACILITIES BY LOCAL GOVERNMENT

J. C. Fensterstock, et al

Teknekron, Incorporated

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16. Abstract

Four case study areas in which environmental analyses (assessments, impact statements, negative declarations, appraisals, etc.) on wastewater treatment facilities to be constructed were ~~reviewed~~. Environmental analyses reflected CEQ and EPA guidelines in force during 1970 and 1972. Case examples were selected to ensure representation of jurisdictional patterns, settings, and availability of environmental analyses. The study reviewed decision-making processes of local and state governments, ~~The study~~ and identified and detected several types of problems, both substantative and procedural. They were: inadequate environmental orientation of staffs; exclusion of lay public input; intra/inter-organizational conflicts; inadequate guidelines; and timing of environmental analyses for local consideration of consequences. Recommendations ~~included:~~ are made, legislative changes; Federal funding for staff training programs; definitive guidelines for organizational structuring; and recommendations to increase greater lay public participation during the planning and decision-making processes.

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By

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FOREWORD

The widespread use of environmental impact analysis as a means of achieving Federal agency decision-making responsive to environmental concerns was initiated by the passage of the National Environmental Policy Act of 1969. The Act required that Federal agencies prepare statements assessing the environmental impact of their major actions significantly affecting the quality of the human environment. In subsequent years, Federal agencies developed procedures for the preparation of environmental impact statements, often requiring similar analyses and statements from local governments and the private sector as a requirement for the award of Federal permits or grants. In addition, some states established governmental impact statement requirements. Recent revisions of guidelines for the preparation of Federal impact statements, issued by the Council on Environmental Quality, have defined clear requirements for impact statements issued by Federal agencies. However, such uniformity of procedure and approach has not been widely extended below the Federal level through either specific Federal agency requirements or individual state requirements. Further, while the guidelines may specify what is desired in Federal impact statements, technical approaches to meeting these objectives may not always be available and universally acceptable.

As a part of its series of Socioeconomic Environmental Studies, the Environmental Protection Agency, Office of Research and Development, is conducting research whose objectives are to:

. Improve the technical quality of environmental impact analyses in areas of Agency responsibility;

. Improve the ability of the Agency to provide substantive technical review of environmental impact statements prepared by other agencies; and

. Improve the effectiveness of the use of environmental impact analyses in influencing decision-making at all governmental levels.

This publication is the first of a two-part series of reports relating to the use of environmental impact analyses by local government in their decision-making process. The study reviews four cases in which environmental analyses were prepared on wastewater treatment facilities proposed for EPA funding. Case study examples were selected to ensure representation of different types of both jurisdictional patterns and locational settings, and the availability of pertinent environmental analyses. The study process reviewed the entire flow of project decision-making, including organizational structures, program initiation, lay public participation, state role, and EPA regional office processes.

The study analysis identified and detected several types of problems, both substantive and procedural. These problems were attributed to various root causes, and recommendations developed were specifically addressed to these causes.

The environmental analyses, whether prepared by the applicant or EPA, were based on interim, final or revised guidelines for implementation of the National Environmental Policy Act of 1969, promulgated by the Council on Environmental Quality and the Environmental Protection Agency during the period of 1970 through 1972. The second report of this project, will provide a comparative analysis of environmental analyses (assessments, impact statements, negative declarations, appraisals, etc.) prepared by either the applicant or EPA, and based on CEQ Guidelines for the Preparations of Environmental Impact Statements, dated August 4, 1973 and EPA Interim Guidelines for the Preparation of Environmental Impact Statements, dated January 17, 1973: a detailed review of state agency input into the decision-making process: and a review of the means by which local governments keep the lay public informed of actions and/or programs having a significant environmental impact.

This series of studies is being conducted by the Applied Research Division of Teknekron, Inc., 1019 19th Street, N.W., Washington, D.C., 20036, under the direction of Jack C. Fensterstock and David M. Speaker. The work was supported by the Ecological Impact Analysis Staff, Washington Environmental Research Center.

Edwin B. Royce

Edwin B. Royce, Director
Ecological Impact Analysis Staff

ABSTRACT

Environmental analyses (assessments, environmental impact statements, negative declarations, appraisals, etc.) on wastewater treatment facilities reflecting Council of Environmental Quality and Environmental Protection Agency guidelines in force during the period of 1970 through 1972, were reviewed and evaluated. Case studies selected ensured representation of different types of both jurisdictional patterns and locational settings. The study process reviewed decision-making flows, organizational structures, public and state government roles, and EPA regional office review processes. The general conclusions reached, showed that environmental considerations played a relatively minor role in the decision-making processes.

The analysis detected both substantive and procedural problems. The problems include: inadequate environmental orientation of staffs; exclusion of public input; intra-organizational conflicts; and inadequate Federal guidelines.

Recommendations which would be appropriate for local, state and Federal implementation include: Federal funding to state and local agencies for training staffs; more precise Federal guidelines; legislative changes; and suggestions to improve public participation in the entire decision-making process.

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Nassau-Suffolk Counties, New York
Hot Springs, Arkansas
Jacksonville, Florida
East Bay Municipal Utility District, California

I CONCLUSIONS

This report, which presents the first phase of a two part program, is based on the analysis of the wastewater treatment facility grant application process as conducted at four case example study sites: Jacksonville, Florida; Hot Springs, Arkansas; Nassau-Suffolk Counties, New York; and East Bay Municipal Utility District, California. In the course of the analysis, various problem areas were identified. These concerned such questions as the role of enviornmental considerations in decision-making, the opportunity for public participation in the planning process and the organization and content of official documents presenting the prospective environmental implications of the proposed wastewater treatment projects. Most of the specific problems encountered appeared as symptoms of the following root causes:

- Inadequacy of local agency staff resources and/or environmental orientation.
- Exclusion by the grant initiating agency of information or opinions (from sources external to the agency) from planning and decision-making processes.
- Subordination of environmental concerns to other considerations (such as technical and economic) in decision-making.
- Nonuniformity of EPA regional office organization as this affects prioritization of responsibilities.
- Inadequacy of guidance materials used for the preparation of environmental documents relating to proposed projects. (This references Guidelines issued by FWQA and EPA which were in effect when these projects were being planned.)
- Failure of local jurisdictions to enact legislation providing both authorization and resource support for environmental reviews and assessments of proposed wastewater treatment projects for which grant funding is sought.
- Delayed timing of public participation in the planning process until after decisions have been made with the results that potentially viable alternatives to the proposed project are no longer open for public consideration.

II RECOMMENDATIONS

The summary recommendations presented below address the broad problem areas previously identified. (Both the problems and the recommendations are treated in more detail later in this report. See page 18.

- The institution of EPA grant programs, appropriate capital budgeting procedures and the use of local available qualified personnel to permit (a) augmentation of local agency staffs and (b) establishment of environmental training programs for current staff members.
- Modification of EPA regulations (relating to the wastewater treatment facility grant application process) to require that complete records of public hearings and documented evidence of adequate circulation of alternative facility designs to interested local agencies accompany the grant application.
- The requirement that an evaluation of the environmental implications of facility design alternatives be completed and presented at a public meeting prior to selection of final design by local political entities.
- Establishment within EPA regional offices (where appropriate) of administrative separation between the responsibility for grant fund disbursement and environmental evaluation (including environmental impact statement preparation) of proposed wastewater treatment facilities.
- Preparation by EPA of guidelines for assistance to local agencies in the development of environmental assessments of proposed wastewater treatment facilities.

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III INTRODUCTION

This project, entitled "Use of Environmental Analyses of Wastewater Facilities by Local Governments" was conducted in response to EPA's concern as to whether environmental considerations were subordinated to a minor role by local governments in their wastewater treatment facility planning. Local jurisdictional authorities, such as municipal, special purpose districts, county and regional agencies may formally apply to EPA for grant funds to be used in support of wastewater treatment plants or directly associated facilities. As part of the grant application process, the applicant is required to prepare an "environmental assessment" which discusses (among other topics) the prospective environmental impact of the proposed facility as well as that of alternative designs (including alternative siting) which were considered during the decision-making process. EPA regulations also require that the grant applicant hold public meetings for open discussion of the proposed project and the environmental assessment.

Grant application documents which might include engineering feasibility reports, comments for private and public agencies and the assessment are initially reviewed by the water pollution control or equivalent agency of the state within which the proposed facility is to be constructed. The state agency is responsible for determining that the project is entitled to priority (in accordance with a project priority list previously submitted to EPA Regional Administrator) and that the grant application is complete. If, following state review, the documents are found satisfactory, they are transmitted to the appropriate EPA Regional Office. The regional office must determine whether the prospective environmental effects of the construction and operation of the facility are likely to be "significant", thus requiring the preparation and issuance of an "Environmental Impact Statement" (EIS) under the provisions of the National Environmental Policy Act of 1969. If these are considered insufficient to warrant an EIS, the regional office must prepare an "Environmental Appraisal" and issue a "Negative Declaration" to the effect that this project will not significantly affect the quality of the environment.

Figure 1 is a flowchart which presents sequential steps through which environmental analyses* are generally prepared and circulated. It should be

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* As used in this report the term "environmental analyses" includes all environmentally related documents, i.e., environmental assessments, environmental impact statements, environmental appraisals and negative declarations.

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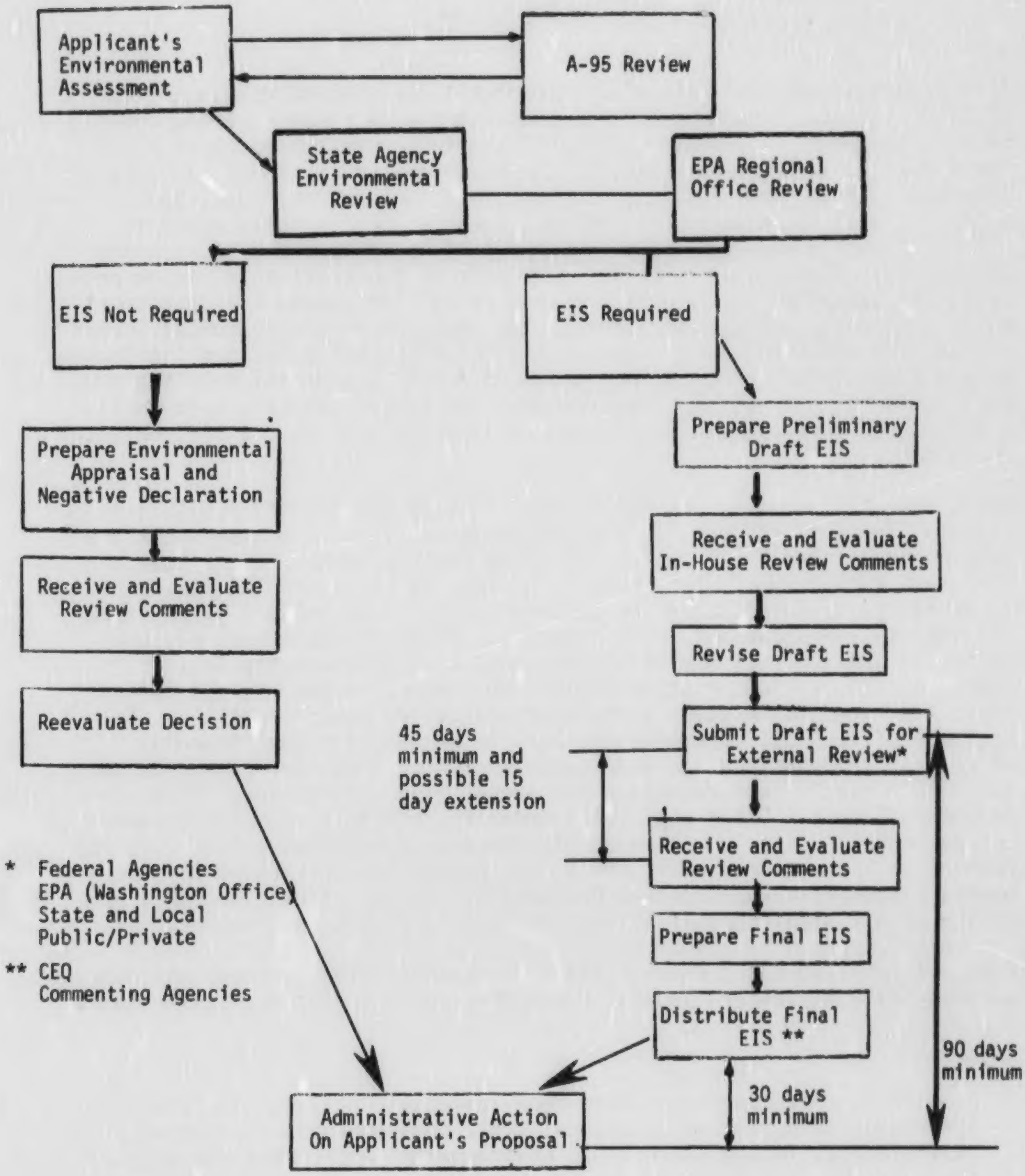
FIGURE 1. PREPARATION AND CIRCULATION OF ENVIRONMENTAL ANALYSES


Applicant's Environmental Assessment
A-95 Review
State Agency Environmental Review
EPA Regional Office Review
EIS Not Required
EIS Required
Prepare Environmental Appraisal and Negative Declaration
Receive and Evaluate Review Comments
Reevaluate Decision
Prepare Preliminary Draft EIS
Receive and Evaluate In-House Review Comments
Revise Draft EIS
Submit Draft EIS for External Review*
45 days minimum and possible 15 day extension
Receive and Evaluate Review Comments
Prepare Final EIS
Distribute Final EIS **
30 days minimum
90 days minimum
Administrative Action On Applicant's Proposal

* Federal Agencies
EPA (Washington Office)
State and Local
Public/Private

** CEQ
Commenting Agencies

noted that the environmental assessment (which is prepared by the applicant) is of particular importance because it is a major source of information for the EPA regional office responsible for project review.

Specific objectives of this study were: (1) an appraisal of specific wastewater program environmental analyses in terms of adequacy and other significant criteria, and (2) the examination of manner and degree to which impact analysis is actually utilized in the decision-making process, the relations of such considerations to political expediency, public and institutional constraints and the way in which the effectiveness of these analyses have been influenced by procedural factors, e.g., timing, mode of submission, etc. The study itself consisted of two main parts. The first of these involved on-site visits to four case example areas within which wastewater treatment facility grant applications had been generated. These areas were selected on the basis of their representativeness of jurisdictional types (single and multi-jurisdictional) and settings (urban and rural/urban) and on the availability of environmental analyses pertaining to local projects. The study sites were:

- Jacksonville, Florida
- Hot Springs, Arkansas
- Nassau-Suffolk Counties, New York
- East Bay Municipal Utility District, California

The second part of the study was the evaluation of the environmental analyses pertaining to the case example projects.

In the course of the project, various problem areas were identified. Some of these were procedural in nature and, on the whole, reflected inadequate representation of environmental concerns as effective influential factors in the decision-making process. Some problem areas, relating to environmental analyses, were essentially substantive in that they stemmed from failures to address or inadequate treatments of various topical areas which properly should be considered. In general, such inadequacies were more common in assessments than in environmental impact statements.

It should be understood from the outset that the environmental assessments studied were issued at different periods during which different Federal guidelines for the preparation of these documents were in effect. These guidelines, which are briefly described in Appendix B of this report, are essentially similar in principle. However, recent versions provide far more detailed guidance to the applicant than early issuances. Evaluation of the environment assessments accordingly took into account the particular guideline which was to be followed at the time a given assessment was prepared.

IV STUDY FINDINGS

During the course of the study it became apparent that there were many problems and constraints relating to the wastewater treatment planning process, to decision-making procedures from the local community through the state and EPA regional office and to environmental analysis organization and content. Problems falling into the first two categories which are specific to individual cases are identified in Appendix A. Problems associated with environmental analyses and those which appear to be commonly encountered among the cases studied are presented below. (Note that comments on specific analyses are presented in Appendix C.)

In discussing problem areas which seem to be pervasive, it is convenient to categorize them according to whether they are essentially procedural or substantive. Certain problem areas which do not clearly fall into either category are classified as miscellaneous. These categories are defined as follows:

Procedural:	Problems which relate to the procedural aspects of the grant application and decision-making processes.
Substantive:	Problems which relate to scope, content and structure of environmental analyses.
Miscellaneous:	Problems in this category do not clearly relate to either of the above but rather procedural situations in which a constraint may be inadequacy of financial or staff resource.

PRINCIPAL PROCEDURAL PROBLEM AREAS

The procedural problem areas discussed below do not constitute an exhaustive list of all that were identified, but do include those considered important in terms of their impact on the overall decision-making process. It is important to recognize that the administrative quality of grant application processing by the various agencies involved varies from one regional area to another. It should not be assumed that each problem cited was encountered during each of the four case examples. However, the problem areas that are discussed were found to be sufficiently prevalent to suggest the need for consideration of specific procedural changes which broaden the base of opinion and technical input on which decisions are based. Such recommendations appear below.

Identification of Problem Areas

a. Inadequacy of Departments of Public Works with respect to competence in the evaluation of local environmental concerns for

for assessment preparation.

Public Works professional personnel are generally oriented toward design, construction maintenance and facility operation, and are rarely trained in environmental engineering. The staff depends on the consulting engineering firm for support in assessment preparation. However, this obviously raises the possibility of a conflict of interest because the consultant* may tend to favor his preferred design alternative. Frequently environmental expertise may exist in another agency or department of local government. However, because of either unawareness that such a resource is available or unwillingness to use it, a Public Works Department may often not take advantage of the expertise on hand. Sometimes, a lack of coordination between the Public Works Department (which is primarily concerned with program implementation) and other agencies or departments may arise from differences of objective. (See paragraph c below for other comments on interdepartmental coordination.)

b. Public participation in initial planning stages.

Rarely does the publc have an opportunity for effective participation in the decision-making process at a point at which the options (alternative designs or approaches) are still open. Usually the Department of Public Works (or its equivalent) proposal addresses the preferred alternative as the chosen project. The other alternatives are often presented in a manner which serves to justify the selection already made. The public does not have the opportunity to gain, at least at a sufficiently early date, a real understanding of the technically feasible alternatives, their prospective economic costs or their environmental implications. The specific project is usually a "line item" in the budget which is presented to the public during the budget hearings.

c. Lack of municipal and local interdepartmental coordination.

It has already been noted that the project proposal originates through collaborative efforts of the Public Works Department and the consulting engineer. The project plan is often circulated to ther internal and local agencies for comment but this is usually after the basic technical decisions have already been made. The effect of comments of informational inputs from local receiving agencies is frequently minimal and usually does not alter basic project decisions. Therefore, the proposal which eventually reaches the regional EPA office may not truly represent the collective views of the local community. To an even greater degree the same is true of environmental assessments in that local departments or public and/or private agencies may not even have the opportunity to review the document prior to its transmittal from the locality to the state and EPA.

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* In addition to this the qualifications of the consulting engineer with respect to environmental disciplines and his knowledge of EPA's regulatory requirements generally tend to be somewhat weak and this is reflected in the quality of assessments which he prepares.

d. Timing of environmental studies and assessment preparation.

In principle, a thorough study of the prospective environmental impacts of the feasible alternatives and the preparation of an environmental assessment which reflects these findings should be prepared prior to final selection of the proposed project plan. As a general rule, however, local governments often subordinate environmental considerations to cost and design factors. Because of EPA requirements, an assessment is prepared (usually by the consulting engineer) but this document is frequently little more than an afterthought and is designed to support a design conclusion already reached, and is a technically (engineering) oriented, single action analysis. Ignoring, for the most part, cumulative impacts of ancillary actions and secondary* environmental impacts. The analysis addresses itself almost solely the primary impacts of the action.

e. Legislative review.

Project review by the local legislative body usually occurs after the project documents (application, assessment, etc.) have passed through the local executive branch of government and constitutes the final community action prior to state and EPA review. There are three general problem areas which are characteristically associated with the legislative review procedure. First, the legislature usually assumes that the executive branch (i.e., mayor's or city manager's office) has fully complied with all EPA and state regulatory and statutory requirements and that all of the documents submitted to it have been correctly prepared and are consistent with EPA's stipulated procedure. Second, the legislature usually does not have the technical capability to review the project documents. Third, the legislature is usually more concerned with economic considerations than with short- or long-term environmental implications or impacts which have not been adequately identified in the assessment or by the public works department.

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* For the purposes of this study, the distinction between primary and secondary environmental impacts is as follows: primary impacts are those that result directly from construction, operation, maintenance or use of the facility being evaluated; and secondary impacts are those which affect the social, cultural, and economic lifestyles of the community or region.

f. Public hearings

As pointed out earlier, the public rarely has an opportunity to participate early in the actual planning process. However, public hearings are virtually always held after the engineering report and assessment have been submitted to the legislature by the Public Works (or equivalent) Department. The actual timing of the hearing with respect to other stages of the application process varies with the locality, but in many cases the public hearing is held on a decision already made. Further, it is not infrequent for the hearing to be conducted in a manner which discourages effective public participation. For example, meetings may be held in the middle of the afternoon during the work week or in other than the prospective area to be impacted. In addition, project plans and assessments are often not easily obtainable. by the lay public or interested agencies.

g. Inadequacy of A-95 review process*.

In some cases the environmental assessment is not sent to the

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* The A-95 review process (so-called because it is detailed in Circular A-95 issued by the Office of Management and Budget) is a procedure through which applicants (who may be governmental or private entities) for assistance under various designated Federal programs notify state and regional "clearinghouses" of their intent to apply and also submit a description of the proposed project. Regional clearinghouses are designated by the state for specific areas and are often the regional planning agencies. Their

A-95 clearinghouse. The transmitted notification may merely identify the request for the grant in terms of the nature of project the applicant and the amount of funding requested. The clearinghouse itself performs no analysis of the project documents but merely forwards these to local area reviewing agencies. When the comments are received from the agencies by the clearinghouse, they are not usually evaluated due to lack of staff resources. Unfavorable comments may never be transmitted to EPA, particularly if the state planning agency favors the project.

h. State assessment review.

In most instances the state water pollution control (or equivalent) agency which is responsible for wastewater treatment facility grant application review, does not critically evaluate the environmental assessments submitted to it. These assessments are merely passed on to the EPA regional office without substantive comment.

i. EPA regional offices' processes.

Because of the high level of autonomy afforded to the EPA regional offices without specific organizational guidelines, there is a considerable degree of variation in procedures and methods from region to region. In particular, responsibility for assessment review is handled by different organizational elements in different regional offices. In addition, the guidance provided for preparation of environmental assessments is, in some cases, only that which appears in regulations issued by EPA Headquarters and, in others, consists of documents prepared by regional office personnel. In general, the disbursement of construction grant funds receives a higher priority than environmental impact statement preparation. The probability of EIS preparation is usually responsive to such factors as the level of public opposition, the proposed project site and the amount

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A-95 related functions include both their own reviews of submitted project plans and the distribution of these plans to state and local agencies for their comments. A key objective of the A-95 process is the coordination of Federally supported planning and development activities within the area in which these activities occur. (FWQA issuance COM 3200.1 contains instructions requiring complete and detailed state review of environmental impact before EPA action. See Appendix D.)

of available information relating to the program and its environmental implications. There are, however, no general criteria uniformly applied in practice for setting EIS preparation priorities, although in theory, at least, the "significance" of prospective environmental impacts of proposed projects could be an appropriate basis for establishing such priorities. Further, in reviewing a proposed project and its environmental assessment, the regional offices will frequently accept the design selected by the applicant. However, it has been suggested (in one instance) that the regional office would accept any alternative design if it were as fully supported as the selection proposed by the applicant. It is noted that FWQA, COM 3200.1 did contain substantive guidelines for review procedures and that regional offices were required to comply with them.

j. Post grant monitoring

Grant awards often contain special conditions that have to be complied with during the construction and/or post construction periods. These conditions may call upon the locality to undertake certain studies, adopt local ordinances or fulfill reporting requirements pertaining to water quality (few, if any special conditions reflect impairment in environmental quality). Frequently the post grant monitoring and control conducted by EPA (and sometimes by the state agency) to assure compliance with grant conditions is weak and perfunctory. (Note that few, if any, grant conditions concern environmental impacts of the facility; they usually relate to engineering or operational considerations.)

SUBSTANTIVE PROBLEM AREAS

The evaluations of the environmental analyses (see Appendix C) were based wholly on the content of the documents and did not reflect additional information obtained during site visits. This was deliberate in order to determine the degree to which the analyses could serve as independent presentations. It was assumed that all facts and statements were precisely factual even though it was subsequently determined that some of the impressions presented in the text were misleading.

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* Note also that the environmental analysis received by the contractor from the regional offices did not necessarily contain all of the documents (engineering reports, maps, etc.) which may have been submitted by the applicant for state and regional office review.

The evaluations included in Appendix C are summarized on page 17, Fig. 2 in the form of a matrix based on key substantive elements:

Pre-existing conditions:	The set of conditions of water quality and associated pollution which make the project a necessary priority.
Nature of project:	Type of facility; new or replacement; proposed site.
Environmental Effects:	
Construction vs. Operation	Effects of construction activity differentiated from on line operation.
Natural environment:	Impact on ecology and media and other natural resources.
Socio-economic:	Impact on people, institutions, aesthetics, and secondary impacts.
Quantification:	Assignment of magnitudes to individual prospective impacts.
Alternatives:	
Technical feasibility:	Presentation of engineering practicability
Economic costs:	Estimate of costs of construction and operation.
Environmental costs:	Assessment of major adverse environmental impacts.
Explicit NEPA Considerations:	Treatment of the specific topical areas identified in NEPA Section 102 as well as in CEQ and EPA Guidelines.
Public Participation:	Discussion of manner and degree of public participation in the decision-making process.

Each analysis is evaluated in terms of its treatment of the above elements. Evaluation is based on a scale of 0 to 2.

0 means topic is not mentioned
1 topic is identified but treated very superficially at best
2 topic is treated to a reasonable extent

As is clear from the matrix,

- Explicit NEPA considerations are consistently addressed in statements but not always in assessments

- Socio-economic considerations are inadequately addressed

- Environmental costs of alternatives are rarely considered

MISCELLANEOUS PROBLEM AREAS

Certain problem areas are identified below which are neither procedural nor substantive. Nevertheless, they have some bearing on the grant application process and are included here for that reason.

a. Limitation of state and local technical capability

To ensure full compliance with EPA regulatory procedures, state and local agencies may be compelled to consider alternatives which they lack the technical competence to evaluate. For example, analysis of the environmental impact of ocean sludge disposal as an alternative to an incinerator poses the requirement for a sophisticated technical analysis which is beyond the scope of most localities.

b. Public interest in secondary impacts

As a general rule, public interest in proposed wastewater treatment systems is intense with respect to three specific areas:

- the actual service to be provided, and cost of such service

- impact of plant construction and operation on neighboring residences
- potential polluting effect of plant effluents on recreational water resources

However, the public is often less concerned about indirect or secondary socio-economic consequences, particularly when such effects may not develop to their fullest in the immediate future. For this reason, even in those few occasions when public participation enters the application process in an active manner, its influence generally affects only immediate and potentially tangible concerns such as the aesthetic implications of treatment plant siting or the possible impact of effluent discharge on the local receiving water and service costs.

FIGURE 2. SUMMARY EVALUATION* OF ENVIRONMENTAL ANALYSES

SUBSTANTIVE ELEMENTS	ENVIRONMENTAL ANALYSES						
	Hot Springs Assessment	Hot Springs Statement	Jacksonville Assessment	Freeport Assessment	Nassau-Suffolk Statement	East Bay MUD Assessment	East Bay MUD Appraisal
Pre-existing Conditions	0	2	2	2	2	2	0
Nature of Project	1	2	2	2	2	2	2
Environmental Effects							
Construction vs Operation	1	2	2	2	2	2	1
Natural Environment	1	2	1	2	2	2	1
Socio-economic	0	1	1	2	0	1	2
Alternatives							
Technical Feasibility	1	1	2	2	2	2	1
Economic costs	2	1	2	2	2	1	0
Environmental Costs	1	1	1	2	2	0	1
Explicit NEPA Considerations	0	2	0	0	2	2	2
Public Participation	1	2	2	0	2	2	1

---

* Evaluation based on
0 - Topic not mentioned
1 - Topic identified but not treated
2 - Topic discussed

c. Growth versus environment

In relatively underdeveloped areas, the construction of a new wastewater treatment facility is not only a powerful stimulus to local growth, but also influences the direction of population growth. Such growth is often favored by the local government because of economic considerations. This orientation deemphasizes consideration of environmental costs such growth may produce. The paradoxical consequence may be that the wastewater treatment plant originally funded by EPA for environmental enhancement purposes, could in some instances actually entail a considerable unforeseen long-term environmental cost induced by commercial and industrial development.

RECOMMENDATIONS

In the course of the analysis of the problem areas identified in the study, it became clear that many of these could be categorized on causal bases. That is, a group of specific problem areas though differing among themselves to some degree were seen as traceable to a common root cause. For this reason, the recommendations that are presented here are on the whole generic in nature. It seemed almost trivial to develop a specific and implicitly obvious recommendation for each individual problem area listed.

The following discussion identifies the key root causes. Under each are listed the problem areas considered to derive from the cause. Specific recommendations are also presented.

a. Staffing resources and orientation

Most of the problem areas which reflect either inadequate review procedures or inadequate concern with environmental considerations appear in the context of an agency staff lacking defined environmental expertise. Nearly always an agency will develop an orientation more related to the actual character of its staffing than to comprehensive realization of its mandates. For example, a Department of Public Works is essentially an engineering design and operating entity. Mere responsibility for considering the environmental implications of its activities will not in itself generate sensitivity to environmental issues if no one on its staff is environmentally oriented. Aside from the question of orientation, environmental expertise is an absolute necessity if environmental surveys are to be performed, satisfactory assessments are to be written and if informational inputs from the consulting engineer or other sources are to be realistically evaluated. The same argument can be applied to a legislative body which lacks technical review capability. It applies to a state review agency whose technical competence includes environmental expertise but whose workload is so heavy that its environmental expert(s) may be involved in too many on-going activities to permit day-to-day attention in-depth to the specifics of local projects.

Relevant problem areas:

- Inadequacy of Department of Public Works with respect to the evaluation of environmental concerns for assessment preparation
- Legislative review
- Inadequacy of A-95 review process
- State assessment review
- EPA regional offices' processes
- Post-grant monitoring
- Limitation of state and local technical capability

RECOMMENDATION:

Obviously the ideal solution to the personnel resource dilemma would be the provision of adequate manpower to the involved agencies. In practice, of course, these agencies lack the fiscal resources that freely elective staffing would require. Accordingly the following approaches are suggested:

i Under a special grant program such as 40 CFR 35 (an element of the Code of Federal Regulations which deals with procedures through which EPA provides state and local grant assistance) EPA may elect to subsidize the requisite manpower on a total cost-sharing basis. The allocation of such manpower would be based on various criteria including size and population of area to be serviced, number of priority treatment plants scheduled and other factors directly affecting the need for the personnel. (Appendix E- 40 CFR 35.)

ii The institution of changes in local capital budgeting regulations to permit the application of capital funds to acquisition and support of specialized personnel required in association with long-term capital investment programs.

iii The establishment of community and regional procedures which would enable local entities to freely utilize personnel with appropriate qualifications in departments or agencies which are not under the direct jurisdiction of the project initiating agency.

iv The use of local university staff members or other qualified individuals on a short term consulting basis.

b. Exclusion

In some instances it appears that the agency initiating the grant application may minimize or ignore potential informational input from other local or state governmental bodies or may fail to provide channels for the injection of local public views into the early stages of the decision-making process. Negative or restrictive actions of this type are regarded as representing the exclusion of effective participation of entities outside of the initiating agency. It is probable that the exclusion procedure reflects the view of the initiating agency to the effect that only it has the necessary engineering and technical expertise required to evaluate the alternative designs submitted by the consulting engineer or developed in conjunction with him. This view is generally valid as far as it goes. However, it fails to take into account the need for very early environmental assessment of the potential environmental impacts both direct and secondary of the alternatives being considered. Such an assessment is important to ensure that the final selection of the proposed design is not based exclusively on economic cost and technical factors.

Relevant problem areas:

- Early public participation in initial planning stages, including initial conceptual approaches.
- Lack of municipal, state and local interdepartmental coordination
- Public hearings and failure to take advantage of possible inputs from other agencies

RECOMMENDATIONS:

In order to ensure both the opportunity for early and responsible public participation and local agency project review on an effective basis in the early conceptual and design program stages, it is suggested that EPA take advantage of the step-wise procedure now applicable to construction grant applications. Paragraph 35.920-3 of CFR 35 should be modified to include among its requirements the following:

i Factual records and transcripts of public hearings conducted in advance of final design selection. These hearings should consider the alternatives proposed by the Department of Public Works in terms of their general feasibility, costs and presumptive environmental impacts based on previously conducted environmental surveys and studies.

ii Documentation demonstrating that presentations of the considered alternatives had been circulated to interested local agencies for their comments and suggestions together with an evaluation of these by the Department of Public Works (or their equivalent).

The paragraph should also include a provision stating that no application relating to Step 2 of the grant application procedure (grant support for preparation of construction drawings and specifications) would be accepted by the appropriate EPA regional office unless the requirements applicable to Step 1 (grant support for preparation of preliminary plans and studies) were satisfied in all respects.

c. Subordination of environmental concerns

It is virtually inevitable that the initiating agency will be more concerned with technical issues than environmental considerations. For this reason, the relatively low priority afforded potential environmental impacts is not adduced as a criticism but rather as a recognition of the realities of the situation.

Relevant problem areas:

- Timing of environmental studies and assessment preparation
- Failure to present preliminary plans at an early date to the lay public and to appropriate agencies together with the environmental implications of the proposed project.

RECOMMENDATION:

In an earlier context the point was made that the addition of environmental expertise to the staff of the initiating agency would be helpful in generating a more environmentally sensitive orientation. It is recognized however that this in itself is not sufficient to ensure that environmental factors have been adequately evaluated before final design selection. Accordingly, it is suggested that once the technical alternatives have been identified and their essential features delineated, an environmental survey be initiated by the applicant as early as possible to assess the potential impacts of these alternatives. This survey should be receptive, of course, to comments and suggestions from other local agencies and the lay public. Further this survey must be completed sufficiently in advance of the public meeting at which the considered alternatives are first to be presented to assure complete identification of all relevant environmental considerations. This presentation would permit local program review before commitment to the final proposed project and at the same time would serve as an important information base for the environmental assessment. It is also suggested that Paragraph 35.920-3 be modified to require submittal of the assessment as a component of the information required under Step 1.

d. Organization

The variations in the organization of EPA regional offices has already been mentioned. One consequence of this is a corresponding variation in level of priority assigned to regional responsibilities. Both EPA's philosophy and current management policies appear to be directed to the increase of regional autonomy. This position can be understood on the basis that the regions have better understanding of local problems and issues than the Headquarter's staff and that autonomy is necessary to ensure unhindered freedom of action. However, it does not necessarily follow that regional autonomy in terms of action is incompatible with regional uniformity in terms of organization.

Relevant problem areas:

- EPA regional offices' processes
- Appropriate assessment of technical expertise
- Independent Environmental Assessment and Statement reveiw responsiblity

RECOMMENDATION:

It is not within the scope of this report to suggest how EPA best reorganize its regional offices to achieve formal organizational similarity. However, it is recommended that, from an overall Agency viewpoint, consideration should be given to functional interrelationships. For example, should responsibility for statement preparation rest with the regional office construction grants group or should it be an independent entity reporting to the Deputy Regional Administrator? The latter arrangement might permit greater objectivity and freedom in assessing and evaluating controversial issues.

e. Guidelines and technical procedures

The identified problems associated with the environmental analyses (particularly assessments) reviewed in this study were substantive in character and in nearly all cases involved either omission of discussions of important topical areas or inadequate treatment of these. In a few instances, the organization of the presentation was poor in terms of sequence. The principal shortcomings, which were previously noted were failures to address the following:

- Explicit NEPA considerations*
- Secondary environmental consequences with specific reference to socio-economic considerations
- Environmental costs of alternatives

RECOMMENDATION:

*Detailed guidelines should be generated (by EPA Headquarters) to supplement information provided in 40 CFR 6.**(EPA Regulations applying to the preparation of environmental impact statements and environmental assessments.) These guidelines would itemize specific environmental and socioeconomic factors to be considered in the course of performing an impact analysis.*

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* Such as short-term uses of the environment vs long-term productivity

** See Appendix F

V APPENDICES

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APPENDIX A

CASE EXAMPLE STUDIES

For purposes of this study, four case examples were selected based on type of jurisdiction (single and multi) and type of area (rural/urban and urban). As these terms are used in the context of this study, multi-jurisdictional is distinguished from single jurisdictional in that the former usually conforms to one of two of the following patterns:

- Provides wastewater treatment and interceptor facilities within an area that includes a municipality and surrounding rural areas.
- Provides utility services in a special district that includes several urban jurisdictions

A rural/urban area is one containing a city whose immediate surroundings are rural rather than suburban.

The final choice of specific study examples was determined by the availability of environmental analyses, representativeness of similar areas and the evolutionary stage of the grant application process. It was considered that more case information would be available for projects which were already in a reasonably advanced stage. The selected areas are believed to be good geographical representations of the general conditions prevailing nationally.

Figure #1 on page 6 which illustrates the "flow" of environmental analysis preparation and circulation as prescribed in EPA guidelines may provide a useful reference in reviewing the following case example studies. Prior to December 1970, wastewater treatment facility grants were administered by the Federal Water Quality Administration (within the Department of the Interior). The procedures applicable to environmental analyses differed from those of EPA in the following respects:

- The FWQA Regional Offices might require assessment review by other Federal agencies (EPA does not).
- Environmental appraisals and negative declarations were not required if it was determined that the proposed project would not warrant preparation of an environmental impact statement.

The FWQA environmental assessment guidelines relating to Waste Treatment Works do not explicitly present the requirement that the public be afforded the opportunity to review the assessment. However, guideline preamble references the fact that Council of Environmental Quality guidelines "stress the need to assure adequate review of projects and Environmental Statements by all concerned citizens and agencies". It is logical to consider that adequate review or projects must include evaluation of environmental assessments pertaining to them.(See Appendix D, Page 90 FWQA Order COM 3200.1, dated October 15, 1970)

CASE EXAMPLE 1: JACKSONVILLE-DuVAL COUNTY, FLORIDA

TYPE	Single jurisdiction - rural/urban
NATURE OF PROJECT	Sludge disposal incinerator. This incinerator is one project element of a comprehensive Sewerage Improvement Program designed to provide sewage collection and treatment for the core and current suburban areas of Jacksonville.

PROJECT CHRONOLOGY

May 1969	City Council resolution that Mayor can ask for Federal sewage treatment plant
June 1970*	Original grant awarded
August 1972	EPA Regional Air Pollution Group states that the local incinerator emission limitation is more stringent than EPA's requirement; therefore, it was assumed that there would be no adverse air environmental impact
April 1973	State decides project is a priority

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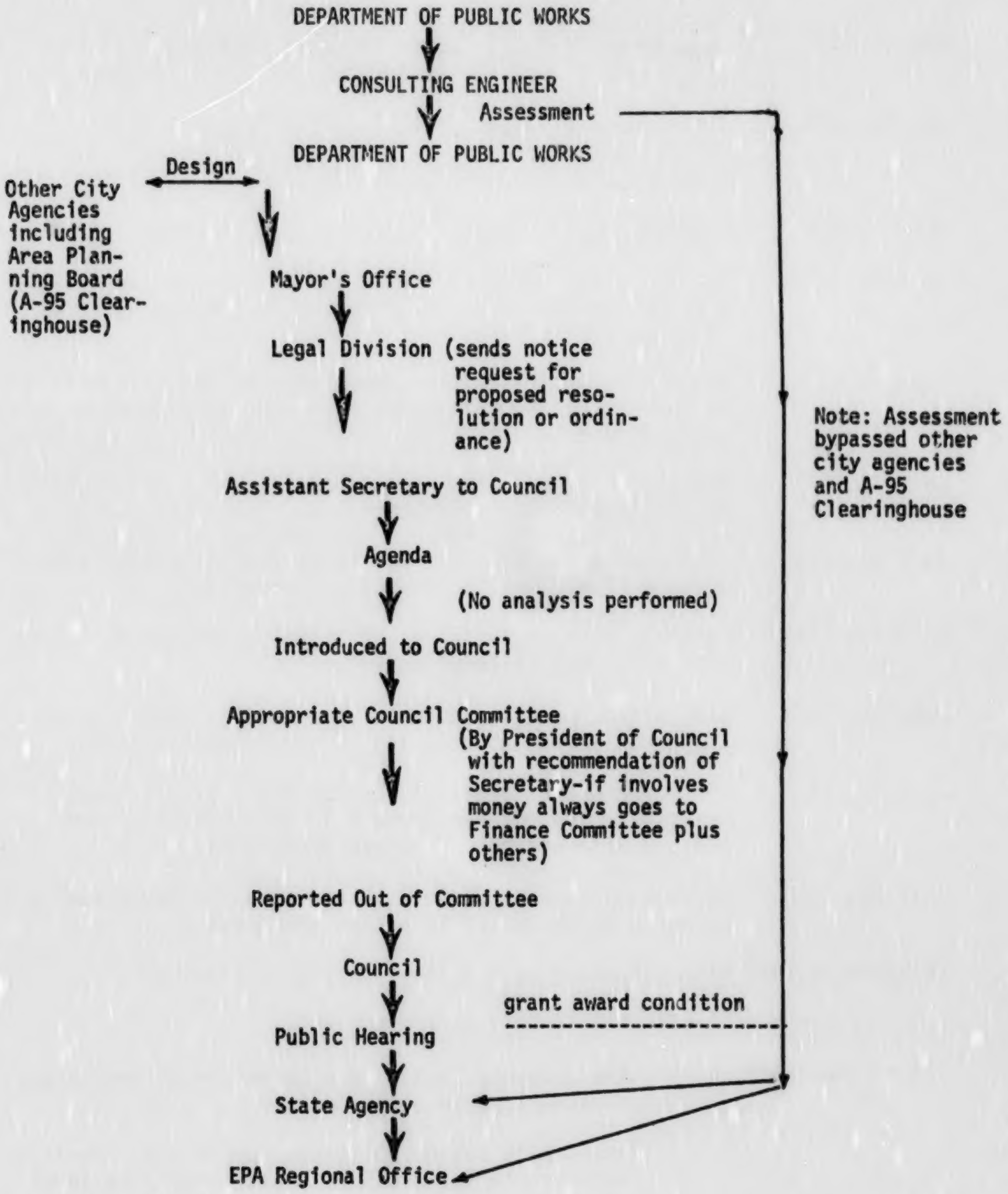
* Initial guidance on NEPA requirements was not in effect until October 1970, therefore an assessment was not required until a subsequent grant was awarded in June 1973.

GRANT APPLICATION PROCESS FLOW - JACKSONVILLE, FLORIDA Figure 3


DEPARTMENT OF PUBLIC WORKS
CONSULTING ENGINEER
Assessment
DEPARTMENT OF PUBLIC WORKS
Design
Other City Agencies including Area Planning Board (A-95 Clearinghouse)
Mayor's Office
Legal Division (sends notice request for proposed resolution or ordinance)
Assistant Secretary to Council
Agenda
(No analysis performed)
Introduced to Council
Appropriate Council Committee
(By President of Council with recommendation of Secretary-if involves money always goes to Finance Committee plus others)
Reported Out of Committee
Council
grant award condition
Public Hearing
State Agency
EPA Regional Office

Note: Assessment bypassed other city agencies and A-95 Clearinghouse

May 1,1973	Department of Public Works forwards assessment to the State with a copy to the Regional Office in Atlanta
May 10,1973	State forwards grant package to EPA Regional Office without the assessment. It was assumed that EPA had received the assessment directly from the locality
June 6,1973	Locality again forwards a copy of the assessment to EPA
June 22,1973	EPA Facilities Branch recommends that a negative declaration be issued if the upcoming public hearing doesn't show any public opposition
June 27,1973	EPA Grants Administrator states that an EIS or negative declaration determination will be made after public hearing is held
June 28,1973	EPA legal group states that the assessment lacks public participation
June 30,1973	EPA makes offer of grant to locality with special conditions (i.e., public hearing is required)
July 13, 1973	Locality accepts the grant with the conditions and states that they will be complied with
July 25, 1973	EPA informs locality again of the special condition of the grant agreement relating to public participation
July 25, 1973	EPA informs the locality's consulting engineer about the public hearing requirement so that contracts and bidding will not be undertaken prematurely
July 28, 1973	Resolution in City Council authorizing the Mayor and Corporation Secretary to accept the grant
September 6,1973	Date scheduled by locality for public hearing

Specific Comments Applicable To This Case Example

EPA Regional Office	. Any properly justified alternative to incineration would have been accepted . Assessment review not given number one priority; decision to issue EIS is based largely on level

	of public opposition, size of project and amount of backup information
	. No guidance available for consideration of secondary impacts
Department of Public Works	. Environmental factors are not weighed or considered in alternative evaluation
	. Assessment not submitted to other agencies on grounds that they had approved the design
	. Relies heavily on consulting engineer for assessment as well as design
Area Planning Board (A-95)	. Did not officially receive assessment
	. More interested in broad conceptual planning than in specific projects
	. Do not have site planning responsibility
	. Not overly concerned with secondary impact
	. Can make recommendation only -- lack line authority -- no follow through
City Council	. Assumes Mayor's organization has complied with all applicable regulations
	. Lacks adequate review staff, guidelines and procedures
	. Does not know grant application process details
Mayor	. Alternative selection does not consider environmental issues
	. Internal city environmental review procedures are weak
	. Secondary impacts not important

State A-95
Clearinghouse

- Does not routinely analyze review comments
- Does not routinely review assessments
- A processing office only; limited capability for technical environmentally oriented analysis

City of Jacksonville

Review process is well organized (See Fig.3, Page 27)

CASE EXAMPLE 2: HOT SPRINGS, ARKANSAS

TYPE

Multi-jurisdiction/Urban-Rural

NATURE OF
PROJECT

Replace three small old wastewater treatment plants in the City of Hot Springs with an area-wide centralized plant providing advanced (tertiary) treatment for peak wastewater flows; provide new interceptor lines, outfalls, and pumping stations within the City of Hot Springs and in settled areas outside the City; rehabilitates the City's existing sewage collection system in order to control stormwater infiltration, prevent the escape of raw sewage and provide some measure of additional capacity.

The region that will be served by the central treatment plant had a 1970 population of about 50,000 persons, of whom about 23,000 (almost all living in the City of Hot Springs) were served by off-site wastewater treatment. Hot Springs' 1980 population is projected at 40,800.

PROJECT CHRONOLOGY

November
25 & 27, 1964

Arkansas Water Pollution Control Commission holds public hearing in Hot Springs regarding pollution of Lake Hamilton, partly in Hot Springs, and Lake Catherine, in surrounding Garland County and near Hot Springs. It was stated that residences around Lake Hamilton and Lake Catherine were major contributors to the pollution

	because of the use of septic tanks set in impermeable soil or rock.
August 24,1964	Arkansas Water Pollution Control Commission issues order enjoining additional on-site waste water treatment systems and regulating existing on-site systems in all but single-family residences within 300' of the shoreline of Lake Hamilton and Lake Catherine.
February 27,1970	Arkansas Pollution Control Commission holds a second hearing in Little Rock. This one concerned the City's discharge of inadequately treated sewage from its disposal system into the two lakes and other water bodies.
March 27,1970	Arkansas Department of Pollution Control and Ecology (formerly called the "Arkansas Water Pollution Control Commission) issues "cease and desist" order (effective May 1, 1970), directing the City of Hot Springs to stop making new connections to the existing sewer system and to prevent existing customers from increasing their discharges into the system, the effect of which was to stop almost all new construction in the City. It ordered the City to submit plans for a comprehensive collection and treatment system for the City and nearby areas of growth by December 31, 1970.
May 4,1970	City of Hot Springs adopts Comprehensive Development Plan, including the Major Street Plan and Land Use Plan. These plans were supposedly the bases for wastewater collection and disposal facilities contained in the Master Sewer Plan.
December 15,1970	Consulting Engineer for the City of Hot Springs presents Master Sewer Plan (a part of the Comprehensive Plan) for Hot Springs and the Metropolitan Area to the City Council and the public. Secondary environmental impacts were not evaluated.
March 24,1971	EPA regional office reviews Master Sewer Plan with Arkansas Department of Pollution Control and Ecology and Association of Arkansas Development Districts.
March 26,1971	EPA approves sewer system design plan for Hot Springs providing (a) single treatment facility, (b) advanced waste treatment, (c) repairs to the existing system to

	control stormwater infiltration and escape of raw sewage and (d) expansion of the collector system to serve more of the metropolitan area.
June 1971	City's consulting engineers complete Engineering Report on a Sanitary Sewerage System for Hot Springs, Arkansas.
November 3,1971	Application for a federal grant for sewage treatment facilities in Hot Springs filed with the Arkansas Department of Pollution Control and Ecology.
December 7,1971	Hot Springs' application accorded State priority certification because of Cease and Desist Order.
December 24,1971	A-95 review recommendation made by regional clearinghouse.
March 14,1972	Hot Springs' application for federal grant received by EPA.
April 7,1972	Interim basin plan certified by the Arkansas Department of Pollution Control and Ecology. The Hot Springs project would have to be compatible with this plan.
May 5,1972	Regional EPA files Notice of Intent to prepare an Environmental Impact Statement.
June 19,1972	Hot Springs City Council approves implementation schedule for sewer treatment facilities to meet state and federal requirements.
July 28,1972	Draft Environmental Impact Statement issued.
August 21,1971	EPA holds public hearing on Draft Environmental Impact Statement.
October 27,1972	Final Environmental Impact Statement issued by EPA.
December 1972	EPA approves grant to cover Phase I of sewer facilities program.

Note: It was impossible to find records through which the history of the Assessment could be traced.

SPECIFIC COMMENTS APPLICABLE TO THIS CASE STUDY

Federal Environmental Protection Agency

1. The Environmental Impact Statement was prepared because of strong protests by residents along Lake Catherine regarding the location and size of the proposed centralized wastewater treatment plant and the discharge of the treated (tertiary) effluent into Lake Catherine.

2. Even while the City of Hot Springs was considering various alternatives involving, for example, different locations for a centralized plant or combinations of smaller plants and rehabilitation of the existing system, EPA Regional Office had almost decided upon the alternative it favored: one centralized plant at Lake Catherine. No other sites for the plant were seriously considered, although several points for the outfall discharge were examined. However, no other combination of plant site and discharge point offered a more favorable combination of area-wide service, economy, capacity, and effluent dispersal.

3. The EPA Regional Office seems to have held the belief that the City could exercise considerable control over the pace, scale and location of growth, most especially outside the City, through the interceptor extensions and the sewer improvement districts. In reality, however, the City cannot exercise much control over development outside the City through the formation of sewer improvement districts (which essentially support collectors and hook-ups) because City can't compel formation of the districts. The districts must first be formed by agreement of property owners (by vote) and then approved by City or County government. Also, City has subdivision regulation control for five miles outside of its boundaries, but not zoning powers; which limits its control of growth.

4. The EPA Regional Office did not receive any clearinghouse review comments, either at the state or regional level; it received only notification of clearinghouse approval. (See comments on clearinghouse review.)

5. EPA believes that the issue of the location of the treatment plant on Lake Catherine and the effluent discharge was adequately discussed in the EIS and that the discharge, after tertiary treatment, will not adversely affect the Lake's water quality.

State Clearinghouse (Arkansas Department of Planning and Development Coordination)

1. The Department of Planning and Development Coordination is a co-equal agency and does not exercise any authority over other state agencies. In the absence of any state requirements for environmental reviews, the

Department has no independent authority over the actions of other agencies that may influence the environment.

2. The Department is very understaffed (only one or two people are assigned to review planning and environmental aspects of all water quality projects in the state) and unable to respond quickly to projects submitted to it for review.

3. Only one agency, the Department of Health, commented during the state clearinghouse review. In fact the clearinghouse thought it worthwhile to notify only two agencies (Departments of Health and Pollution Control and Ecology) of the project during its review.

4. The Department was not contacted by EPA during the preparation of the Environmental Impact Statement; it did contact the two agencies mentioned above.

Regional Clearinghouse (West Central Arkansas Planning and Development District)

1. The City's Engineering Report on a Sanitary Sewerage System for Hot Springs, Arkansas, prepared by the City's consultant had certain deficiencies, in reference to guidelines applying to federal, state and local planning agencies, such as:

a. The sewer plan is only partically responsive to the area-wide goals, objectives and land use elements of the Comprehensive Plan adopted by the City and the West Central Arkansas Planning and Development District (WCAPDD).

b. Service areas, types and locations of existing and planned major wastewater collection and disposal facilities and the location of the regional treatment plant are not adequately specified in the Engineering Report.

c. The allocation of responsibilities among the City, the Planning Commission, the WCAPDD and the contemplated sewer improvement districts for carrying out the sewer plan is not made explicit.

d. There is no indication that the sewer plan was considered by area-wide agencies and authorities with an interest in the project.

e. Despite the progress of the project, the WCAPDD had not yet adopted a sanitary sewer plan for the Hot Springs Area Planning

Jurisdiction. This Jurisdiction is an area which includes the City and its surroundings and which would normally be planned for by the District. As of the date at which Regional Clearinghouse comments were made by the District, this Agency was apparently not required to adopt a sanitary sewer plan within which individual approved projects would be incorporated.

f. The sewer plan does not adequately consider the advantages and disadvantages of all alternatives, the financial costs of some of them and all the possibilities for local financing of the City' share.

2. Considering that the WCAPPD is the only staffed planning agency in the area, the District was not appreciably involved in preparing the sewer plan, especially in relating it to the adopted land use elements of the Comprehensive Plan. WCAPDD was not more fully involved for a number of reasons: it had an essentially advisory and review role for planning that was clearly in the domain of local governments within its jurisdiction and the sewer plan and comprehensive were basically city responsibilities. Also at the time that many of its comments refer to (September 1971) it had not been officially designated as the areawide planning organization (APO) by HUD and the sewer plan itself had not been officially accepted by the HUD area office.

3. Area-wide planning, certainly at the time the sewer plan was formulated and discussed, was rather embryonic. There was no established regional urbanization plan, no water management plan and insufficient technical information for a clearinghouse review.

4. The EPA Regional Office only had minimal contact with the District during its review of the sewer plan and decisions on the location of the treatment plant and the interceptor system. However, there was no contact between the District and EPA during preparation of the EIS.

5. The A-95 review was essentially an internal procedure for the District, as there were really no other agencies qualified to comment on the project at the time. Even though the Hot Springs sewer plan was the District's first major A-95 review, no comments were requested on the project from agencies other than the Hot Springs Planning Commission during the A-95 process. The Commission acknowledged the request, but did not provide comment.

State Department of Pollution Control and Ecology

1. The secondary impact of the treatment plant and the interceptors were not considered by the State to be very important considerations in evaluating

alternative schemes and in formulating specific project plans. Primary effects were by far the most important factors considered by the Department.

2. The alternative treatment plant and interceptor plan selected was not necessarily the least costly. From the Department's perspective it was "best" because of the degree of treatment it offered (tertiary treatment was considered a necessity here because of the environmental vulnerability of the area, the importance of the environment to the economy and the deficiencies in wastewater treatment that had to be redressed) and the minimum operating and maintenance costs.

3. Because of the City's indifferent attitude in the 1960's regarding water pollution and wastewater treatment the Department took a rather strong position toward the City, culminating in the Cease and Desist Order of March 1970. Since then, however, the City has been much more concerned with reaching an effective solution to the problems. Actually, the Cease and Desist Order was modified to permit connections in the sewered areas of Hot Springs, with about 200 out of 500 applications for connections approved.

4. The proposal for a large plant, 20 mgd, was principally a function of the extensive infiltration into the existing system. The discussions on the part of local residents relating to the EIS. especially the protests of the Lake Catherine residents and the fact that recent legislation permitted grants for rehabilitating existing sewer lines, persuaded EPA and the Department to put more money into reducing infiltration, permitting the plant to be reduced to 12 mgd capacity from 20 mgd later in the grant process.

City of Hot Springs

1. The initial Cease and Desist Order discriminated against the City by excluding the areas outside of the City. Development simply went outside of the City where on-site wastewater treatment could be provided, increasing the possibilities of pollution and the difficulty of eventually providing off-site treatment in these areas. When the ban was extended outside of the City it was difficult to enforce because of the widespread absence of a building permit system, as a means of recording development, and of zoning regulations as a control on land use.

2. Inequitable enforcement of the bans on development has placed Hot Springs at a competitive disadvantage regarding the rest of the area, inhibiting commercial (plans for 3 shopping centers are in abeyance) and residential growth. (The EIS states that in October 1972 a backlog equal to 25-30% of residential construction was being held up in Hot Springs.)

3. The nature of municipal government in Hot Springs with a full-time mayor, a City Council and semi-independent agencies with appointed citizen boards responsible for sewer and water investments and operations made it difficult, especially before the seriousness of the City's problem was recognized in 1970, to secure agreement on wastewater plans and programs and to coordinate municipal efforts.

4. The grant conditions imposed by EPA and cited in the EIS require formation of sewer improvement districts which will use independent bonding authority to finance sub-interceptor lines and tie-ins. By making fulfillment of the grant contingent upon the City's ability to form these districts EPA not only placed an unenforceable burden upon the City, but misjudged the ease with which they could be formed and their value.

a. The City, under the enabling legislation, has subdivision jurisdiction only up to 5 miles outside of its limits. Outside of this boundary the City has neither authority in land use or wastewater treatment nor planning responsibilities.

b. The sewer districts are formed upon petition of property owners. Hence, even in the City, owners already relying upon septic tanks may not wish to assume the long-term costs (estimated at $150 to $200 a year) of collector lines and tie-ins.

c. Even in the City, municipal officials expect that only 3 out of 4 potential sewer improvement districts in Hot Springs will actually be formed (petitions have been submitted already for 2 districts composing 55% of the unsewered area in the City) while not more than half of the 12 potential districts outside the City are likely to be formed. Some populous areas, especially outside the City, may be left unsewered, negating much of the value of the project as it is now conceived. (See item b)

d. Even with bond issue funds several of the districts will need grants to complete their local system. Because plans for these sewer improvement districts have not yet been formulated, the level of grant assistance which may be required cannot now be estimated. These districts may need additional funds because allowing for what they may reasonably be expected to raise through bond issues, some individuals believe there will be insufficient funds to pay for collector sewers and local sewer connections which are not eligible for EPA grant assistance.

e. According to the City's Task Force on Sewer Improvement Districts some of the districts outside of the City may not be economically viable because of the configuration of drainage basins, the low density of development and its direction.

f. Unrealistic state requirements for the improvement districts (e.g., dual pumping systems) will increase unit costs in some districts above what property owners may be willing to pay.

g. The City, which has accepted an enforced federal requirement for an area-wide responsibility, will need close cooperation and aid from federal and state agencies in organizing the improvement districts.

5. The grant and environmental review process is too lengthy and complicated (see Fig. 4, Page 39).

6. The County, State Department of Health, the utility companies and the APJ should support measures that will inhibit the proliferation of development outside the sewer improvement districts, especially those outside of the City.

7. An archaic state constitution (dating from 1874) and the financial, economic and social problems of an aging resort area have inhibited the City from moving more expeditiously in resolving water pollution wastewater treatment problems.

8. The ban on hook-ups to the sewer system (initially imposed on Hot Springs, then on areas outside the City) was a strong stimulus to action on pollution control in an area that heretofore had a relatively minimal concern with environmental issues.

GRANT APPLICATION PROCESS FLOW - HOT SPRINGS, ARKANSAS Figure 4

Arkansas Department of Pollution Control and Ecology (DPCE) issues Cease and Desist Order citing Hot Springs

↓

Hot Springs adopts Comprehensive Land Use Plan

↓

Consulting Engineer presents Master Plan for a Sanitary Sewage System, with alternatives showing wastewater treatment to Mayor and City Council. Plan adopted

← Bond issue passed by City Council provides local share for project

↓

EPA Regional Office & Arkansas DPCE review Master Plan and EPA approves concept for development of interceptors and treatment plant

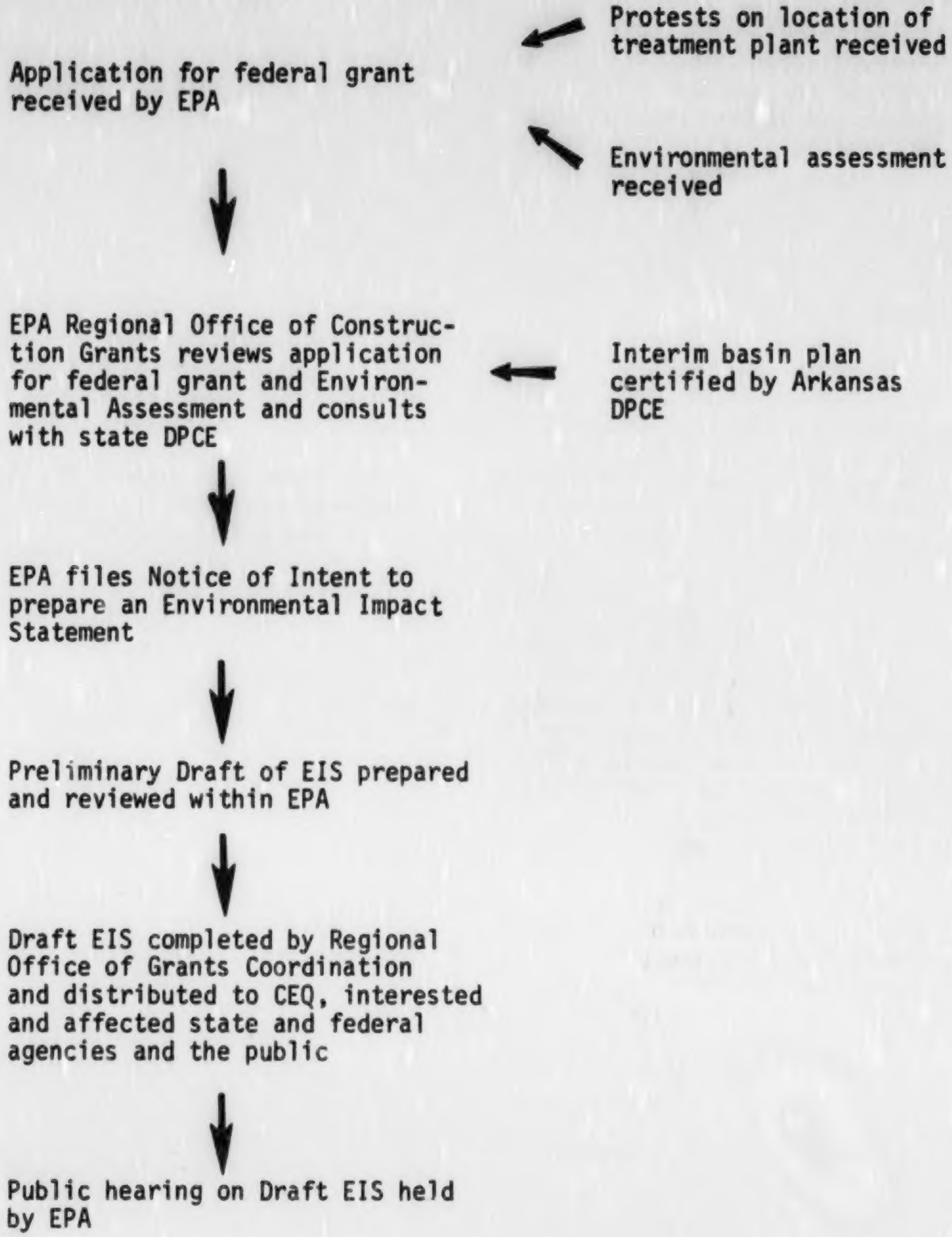
↓

City's application for federal grant receives priority certification from Arkansas DPCE

↓

A-95 review by regional clearinghouse

↓



Protests on location of treatment plant received

Environmental assessment received

Application for federal grant received by EPA

EPA Regional Office of Construction Grants reviews application for federal grant and Environmental Assessment and consults with state DPCE

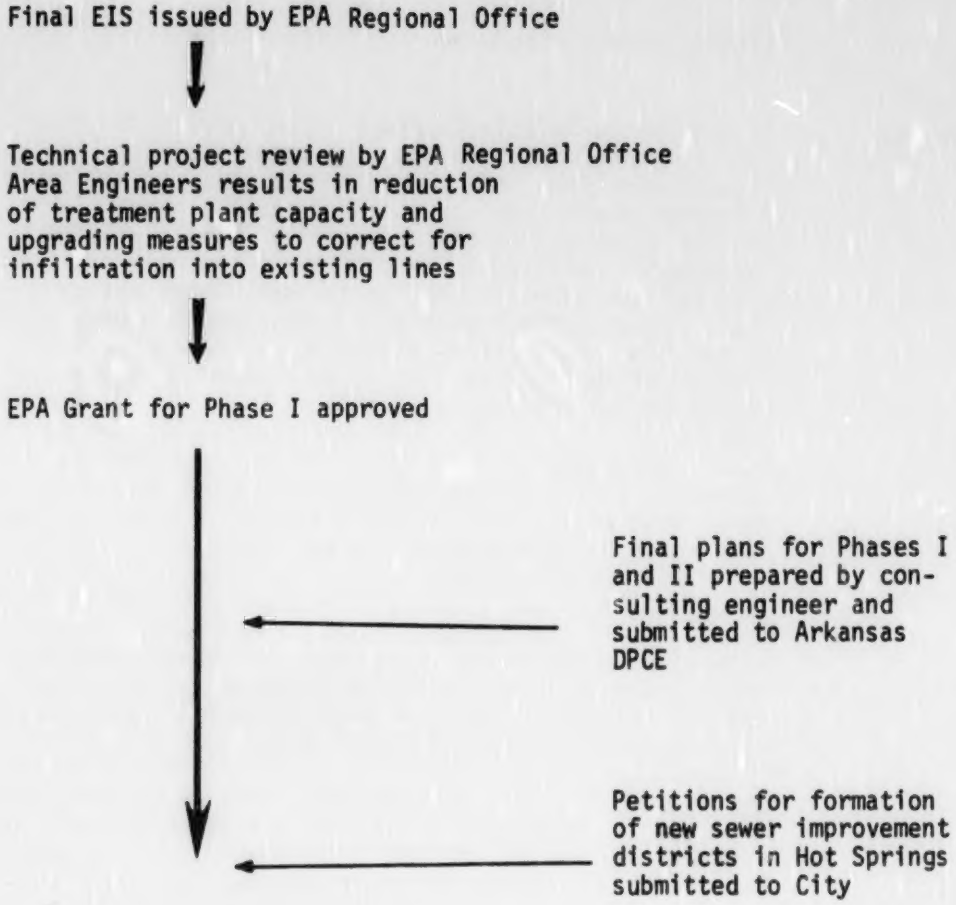
Interim basin plan certified by Arkansas DPCE

EPA files Notice of Intent to prepare an Environmental Impact Statement

Preliminary Draft of EIS prepared and reviewed within EPA

Draft EIS completed by Regional Office of Grants Coordination and distributed to CEQ, interested and affected state and federal agencies and the public

Public hearing on Draft EIS held by EPA



Final EIS issued by EPA Regional Office

Technical project review by EPA Regional Office Area Engineers results in reduction of treatment plant capacity and upgrading measures to correct for infiltration into existing lines

EPA Grant for Phase I approved

Final plans for Phases I and II prepared by consulting engineer and submitted to Arkansas DPCE

Petitions for formation of new sewer improvement districts in Hot Springs submitted to City

CASE EXAMPLES 3 a and 3 b: NASSAU-SUFFOLK COUNTIES, N.Y.

TYPE Single jurisdiction/urban

BACKGROUND In the Nassau-Suffolk Counties study area funds have been requested for more than ten major projects involving sewers, additions and alterations to existing wastewater treatment plants, construction of new treatment plants, and the construction of two outfalls. Environmental Assessments relating to many of these projects had been prepared and submitted to the New York State agency (Department of Environmental Conservation). However, at the time of the study discussed in this Appendix (summer of 1973), virtually no Assessments had been received by the EPA Region II Office.

As a consequence of these proposed projects and their potential environmental impact, the Environmental Defense Fund petitioned the Environmental Protection Agency to prepare an Environmental Impact Statement. EPA Region II prepared a draft in 1971 and then a final EIS in July 1972. The EIS is concerned with the collective impact of all the various projects, addressing itself primarily to environmental effects and other considerations relating to ground water recharge and ocean outfalls. This EIS was prepared without the availability of Assessments as informational sources.

Dealing collectively with as many projects as this EIS does, it is impossible to give full treatment to any one project. Therefore, one of the largest, costliest and most complex projects has been selected for analysis in order to determine the effectiveness of the environmental assessment process.

One project selected concerns the Suffolk County Southwest Sewer District program for providing interceptor and wastewater treatment facilities for three towns and four villages currently without service. The total project provides for construction of lateral sewers, interceptor sewers, a secondary wastewater treatment plant, and an outfall pipe to convey the effluent into the Atlantic Ocean.

A second project of similar proportions in the case study area is the Nassau County Sewer District No. 3 treatment plant and outfall. In terms of time, this project is more advanced than the Suffolk County example and, therefore, less susceptible to detailed environmental analysis.

CASE EXAMPLE 3a: Suffolk County, N.Y. Southwest Sewer District

TYPE	Single jurisdicition/urban
NATURE OF PROJECT:	Construction of a sewage treatment plant, outfall and lateral and interceptor sewer system.

PROJECT CHRONOLOGY

1962-1963	Study by Suffolk County Health Department determines that sewer facilities are necessary to protect water supply.
1965	Suffolk County Sewer Agency (SCSA) founded to develop sewer system for Suffolk County.
1965-1966	New York State Health Department awards grant to prepare comprehensive sewage plan for Long Island.
1966	Report prepared for Suffolk County by Bowe Walsh and Associates, consulting engineers.
1966	SCSA recommends a plan to sewer an area approximately twice the size of the current Southwest Sewer District.
1967	Public referendum to finance plan defeated even though some 50 to 60 public meetings were held prior to the election. The plan is believed to have failed for two reasons: (1) political difficulties in the County prevented the unification of all factors behind the SCSA and; (2) SCSA lost public credibility due to inexperience, small staff and "NEWSDAY", Long Island's main newspaper, which opposed project.
1967-1968	Suffolk County Sewer Agency reorganized following election and sewers for Suffolk County became a bi-partisan issue.
1968	Sewer Advisory Committee established by County Executive to advise SCSA.

1968	SCSA commissioned a new report and feasibility study to resolve earlier problems.
1969	New sewer plan recommends reducing size of SWSD and eliminating groundwater recharge to reduce costs. The public was not as aware of the environmental issues connected with recharge at this point. Major issue was project cost. Report also recommended outfall into the Atlantic Ocean to dispose of the effluent.
1969	Public referendum on new plan barely passes, approving $291,000,000 for sewer facilities construction. The need for sewers in this populated segment of the County was stressed in approximately 50 public meetings held on the issue.
1970	Responsibility for County program was shifted from SCSA to Department of Public Works because SCSA was relatively small. Sewer subdivision program given to SCSA to operate instead. This program required municipalities to put sewers in new subdivisions; an important program in itself but beyond the scope of this study. DPW now had major responsibility for construction of the Southwest Sewer District.
	The program was reviewed by the Tri-State Regional Planning Commission (February 1970) for conformity with regional development plans. This Agency assigned a high priority to the project and suggested its expansion to include the entire drainage basin. Project reviews were also conducted by the New York State Office of Planning Coordination (February 1970) which approved the program.
1970-1971	Government reorganization in Suffolk County, influenced by changes in New York State Department of Environmental Conservation, resulted in consolidating the Sewer District, DPW, Department of Health, and others into the Department of Environmental Control. This new department was given authority for the project. However little progress in the project itself was made during the reorganizations.
1971	Some contracts were let for design of project components, the only progress made in the almost three years since the referendum passed. The Suffolk County Council on Environmental Quality (SCCEQ) which had reviewed the project, reported to the Suffolk County Legislature on November 1, 1971. The report contained recommendations for continuing the project

	as well as recommendations, including conducting research on alternative methods of wastewater treatment and discharge to groundwater. SCCEQ also suggested that the County undertake a land acquisition program to provide for surficial and aquifer recharge.
1972	To qualify for assistance under state environmental bond issue construction had to begin by March 30, 1972. Therefore construction was started on portions of the laterals and interceptor system. The remaining portions of the project were approved in 1972 including outfall, treatment plant, and interceptor system. Contracts let for engineering and construction.
Late 1972	Construction of project stopped as a result of a reduction in federal funds. Local groups organized to halt it permanently due to rising costs and the burden on taxpayers.
March 1973	A new report on financing for the Southwest Sewer District was prepared giving total project costs based upon escalating calculations until completion. Total costs were estimated at $588,000,000 of which 55% is guaranteed by state and federal funds. Construction resumed after 6 month hiatus. County Executive and legislature made decision to complete the project following new report.

SPECIFIC COMMENTS APPLICABLE TO THE CASE STUDY

Environmental Protection Agency

1. EPA had no environmental assessments available on Nassau-Suffolk projects, although they had been submitted to the State. (They are being received by Region II as of the spring of 1974.)

2. Environmental assessments were not used in the preparation of the Environmental Impact Statement because of the unavailability at the time.

3. Regional office complained of lack of guidance from Washington on environmental matters; even after NEPA. (FWQA Guidelines were still in effect; these had not, apparently, been rescinded, even after later EPA guidance issuances were promulgated.)

4. No early projects were reviewed from environmental perspective unless there was the possibility of a lawsuit.

5. EPA office would like the early State plans updated. (These plans had been completed several years ago but implementation was postponed due to lack of funding, when funds become available, these plans were resubmitted without updating.)

State Clearinghouse (New York State Office of Planning Services)

The state clearinghouse, the New York State Office of Planning Services (OPS) circulated the consulting engineers PNRS Letter of Intent (prepared by Bowe, Walsh and Associates, dated December 22, 1969) according to OMB circular No. A-95. Only the Department of Transportation commented, noting the proximity of the project to state highways. After meeting with the county's engineer, approval to advance the project was granted and the A-95 process at this stage was completed in February 1970.

Review Procedures for A-95 clearance through the State Clearinghouse, Albany.

FIGURE 5

PNRS letter of intent from Albany (OPS)

↓

Region I

↓

Review Agencies Comment

↓

Albany (OPS)

↓

Applicant

Metropolitan Clearinghouse (Tri-State Regional Planning Commission)

1. The Tri-State Regional Planning Commission (TSRPC) is the metropolitan "areawide" clearinghouse for the region including the Nassau-Suffolk area; the Nassau-Suffolk Regional Planning Commission serves as TSRPC's agent in reviewing nonregional projects.

Most of the projects identified in EPA's EIS are regional including the ones under discussion in this case study.

2. Tri-State's comments on the Suffolk County project date back to February 1970. Its comments were made in response to the PNRS Letter of Intent which was submitted by the County's consulting engineer rather than directly from a County agency. The project applicant was however listed as the Suffolk County Sewer Agency.

3. No other documents, such as environmental assessments, maps, or project plans accompanied the PNRS Letter of Intent. Tri-State's review does not include specific mention of environmental impacts but it does indicate the project is not in conflict with Tri-State's water supply and sewerage plan and transportation plan. The project was given the highest priority and the review recommends proceeding with construction immediately.

Suffolk County Department of Environmental Control (SCDEC)

1. The active agency responsible for all sewer projects in the county. The staff consists primarily of engineers with one full time environmentalist engaged in departmental programs and working with consulting engineers on specific projects.

2. The SCDEC has no special expertise in land use planning; project considerations are based solely on scientific data.

3. The general belief at the Department is that the environmental assessment is required as part of an established process and does not contribute much to the final project decision. The purpose of the environmental assessment process did not seem to be clearly understood.

4. Two environmental assessments were prepared for Southwest Sewer District Project on two different occasions; both were requested by EPA.

5. The Department feels that the entire project satisfies federal requirements (including environmental matters) because funds were ultimately granted. They did everything requested or required.

Suffolk County Council on Environmental Quality

This agency is mandated by the County Legislature to perform environmental reviews of county projects, but it has no enforcement powers. Its primary functions are:

a. Preparation of guidelines for determining which projects are likely to have significant environmental effects.

b. Formulation of recommendations for consideration by the County Legislature and County Executive as to which county-owned properties should be dedicated to the county nature preserve or historic trust and what properties should be acquired by the county for such dedication.

c. Provision of advice and assistance to the County Executive in the preparation of an annual Environmental Quality Report.

d. Preparation of reports to the County Legislature and Executive regarding county developments likely to impact the environment.

e. Performance, on request of the County Legislature or Executive, of environmental reviews of designated projects which may affect the environmental quality of Suffolk County.

The agency made no contribution to outfall project.

Nassau-Suffolk Regional Planning Board

1. No mandate for project review. Discussions with local officials on projects are informal and generally through the Marine Resources Council (MRC). The MRC is a committee of the Nassau-Suffolk Regional Planning Board which advises the Board on environmental matter upon request.

2. The Board believes that Suffolk County is behind in development of wastewater treatment facilities and that the cost of developing sewer and treatment facilities will restrict development in the County.

3. The Board does not review environmental assessments.

4. It believes that the Suffolk County Council on Environmental Quality is more effective than Nassau County Environmental Management Council

because former is provided for in the County charter and charged with specific environmental concerns.

New York State Department of Environmental Conservation (NYDEC): Regional Office at Stony Brook

1. Conducts New York State environmental review from a regional perspective.

2. The projects it evaluates are referred from the NYDEC, Environmental Analysis Office for review rather than directly from the applicant.

3. The DEC Regional Office does not have any record of having reviewed the Suffolk County Sewer District Project or Nassau County Sewer District No. 3 project.

4. NYDEC review procedures for grant applications:

FIGURE 6

Application

↓

Pure Waters Section (of NYDEC)

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Regional Clearing House:
Office of Environmental
Analysis (OEA)

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Regional Agencies (of OEA)
Management and Development
Environmental Control
Marine Research
Environmental Quality
Fish and Wildlife
Law Enforcement
Administration

↓

Back to Albany OEA

NYDEC Office of Environmental Analysis (OEA), Albany

1. All projects receive some environmental analysis by this Office, but the intensity depends upon the workload at the regional offices.

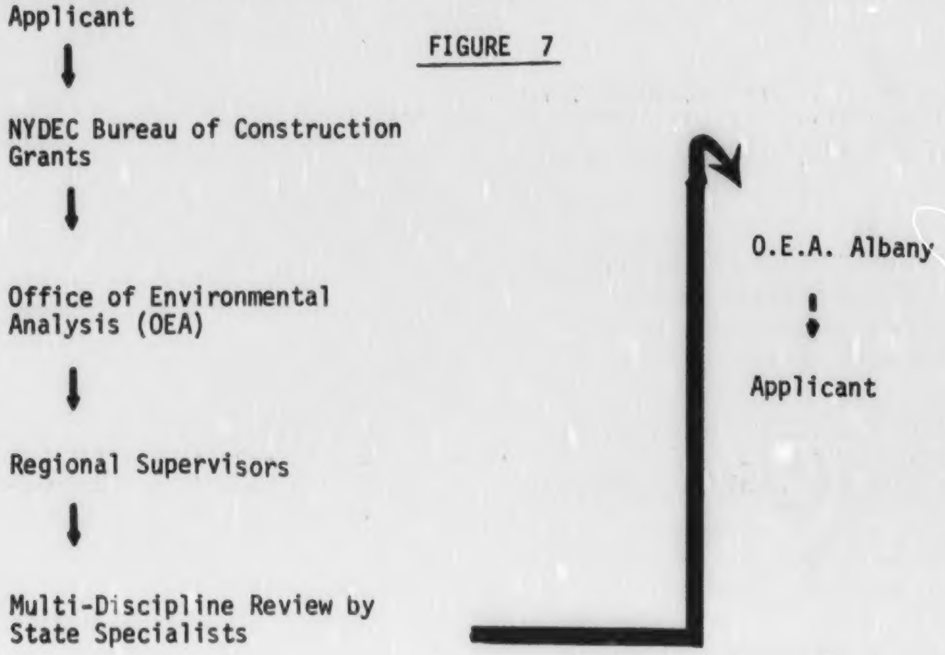
2. State is more responsive to overall planning considerations than regions, due in part to inadequate staffing and in part ot lack of appropriate guidelines.

3. Albany OEA was not familiar with two projects in Nassau-Suffolk Counties case study area.

4. OEA concedes that there are frequently major areas of omission because of lack of attention in the review process.

OEA review procedure for wastewater grants

FIGURE 7

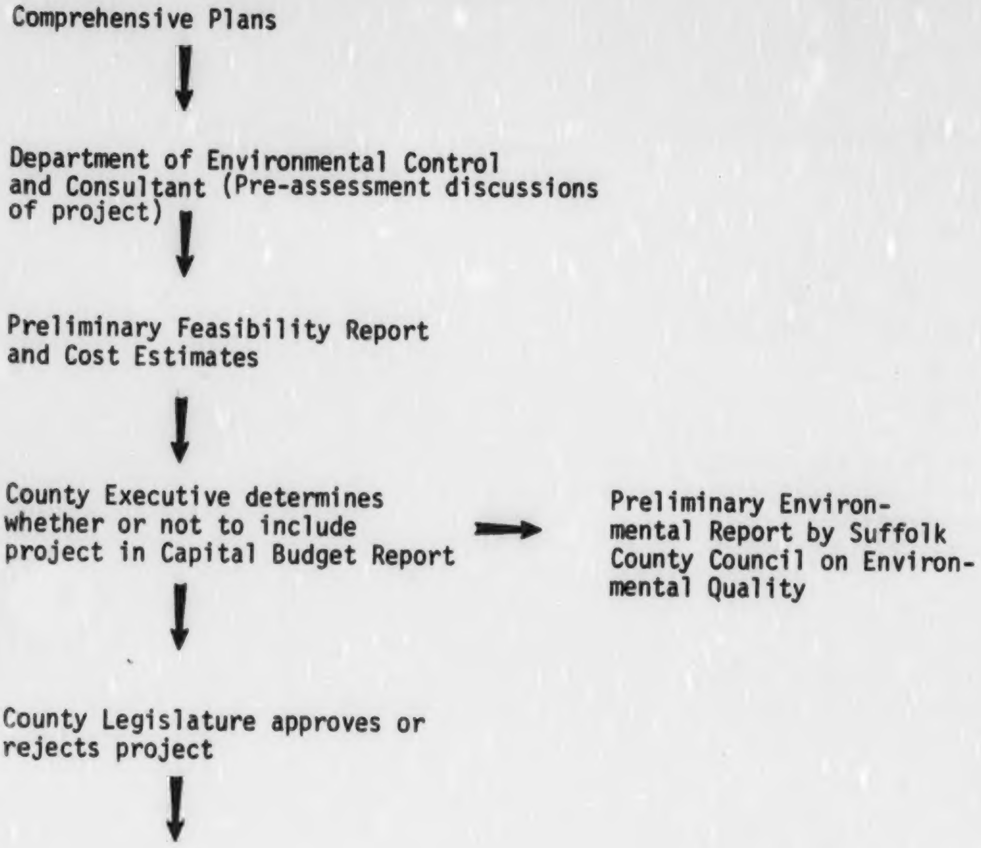

Applicant
NYDEC Bureau of Construction Grants
Office of Environmental Analysis (OEA)
Regional Supervisors
Multi-Discipline Review by State Specialists
O.E.A. Albany
Applicant

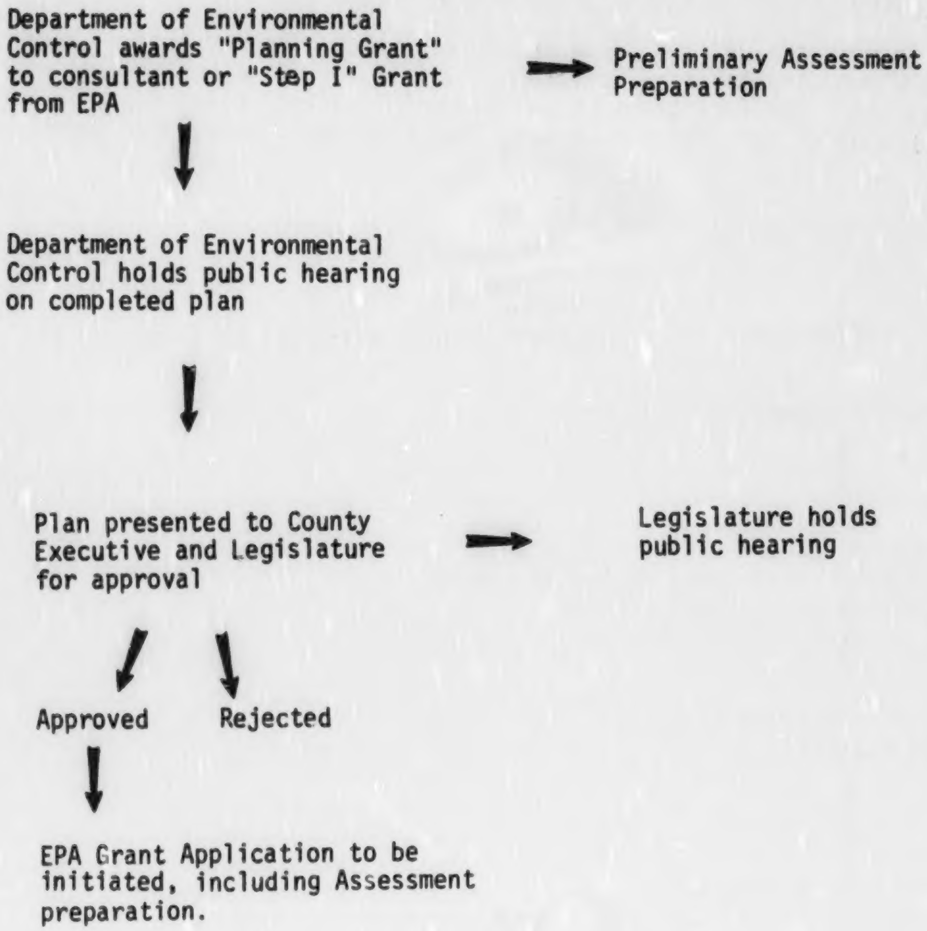
Southwest Sewer District Grant Application Process

The Flow Chart which follows presents the key steps with respect to county actions and decision making which preceed initiation of the grant application. Note that the Department of Environmental Control holds a public meeting only after the decision on the final plan has already been made.

FIGURE 8

GRANT APPLICATION PROCESS FLOW (Suffolk County Southwest Sewer District)


Comprehensive Plans
Department of Environmental Control and Consultant (Pre-assessment discussions of project)
Preliminary Feasibility Report and Cost Estimates
County Executive determines whether or not to include project in Capital Budget Report
Preliminary Environmental Report by Suffolk County Council on Environmental Quality
County Legislature approves or rejects project



Department of Environmental Control awards "Planning Grant" to consultant or "Step I" Grant from EPA

Preliminary Assessment Preparation

Department of Environmental Control holds public hearing on completed plan

Plan presented to County Executive and Legislature for approval

Legislature holds public hearing

Approved

Rejected

EPA Grant Application to be initiated, including Assessment preparation.

NYDEC Bureau of Construction Grants

1. Most knowledgeable agency with regard to study area projects with complete files on both projects.

2. The Bureau has assessments for projects which EPA denies ever having seen.

3. Requires application to be in conformance with state plans.

CASE EXAMPLE 3b: Nassau, N.Y. Sewer District No. 3

TYPE	Single jurisdictional/urban
NATURE OF PROJECT	Construction of a sewage treatment plant, ocean outfall, interceptor sewers and pumping station

PROJECT CHRONOLOGY

Pre-1968	Developed area required sewers urgently because of cesspool and ground water supply problems.
1968 to present	Since 1968 over 300 miles of sewers have been installed (1700 miles when complete in 1983). The Wantagh treatment plant is finished and operating but not yet treating sewage. Outfall is completed in the land and bay portions and 8100 feet of ocean section finished. Approximately one mile of outfall pipe and diffuser must be installed to complete the job.
January 12, 1971	Meeting to discuss selection of alternatives for final treatment. Choices were a tertiary treatment plant with ground water recharge or outfall into the Atlantic. Participants included representatives from Nassau County, NYS Department of Environmental Conservation including the Commissioner and regional EPA. Meeting resulted in selection of outfall for two reasons: to avoid dumping into Great South Bay and the likely high costs and lack of demonstrated feasibility for recharging. The use of an outfall had the approval of environmental groups at the time.

SPECIFIC COMMENTS APPLICABLE TO THIS CASE STUDY

Nassau County Department of Public Works

1. Responsible for Sewer District No. 3. Requirements based upon County Comprehensive Sewer Plan which covers four sewerage disposal districts in Nassau County.

2. There is no environmental review process similar to the Suffolk County procedure.

3. DPW presentations of the Sewer District No. 3 project includes no consideration of secondary impacts.

4. The county states that its current policy favors a "no growth" situation.

Nassau County Environmental Management Council

1. Serves in advisory capacity to County Executive (upon request) to provide information and data and coordinate environmental affairs in the County.

2. Has no legislative mandate for enforcement or operation.

3. Does not conduct reviews or write assessments but conducts public hearings required under NEPA: to date it has conducted one hearing.

4. The Council does not have written guidelines for environmental assessments. It is not familiar with federal guidelines.

Nassau County Planning Commission

1. Does not do environmental planning for capital projects. For wastewater projects all planning is done by Department of Public Works and Department of Health.

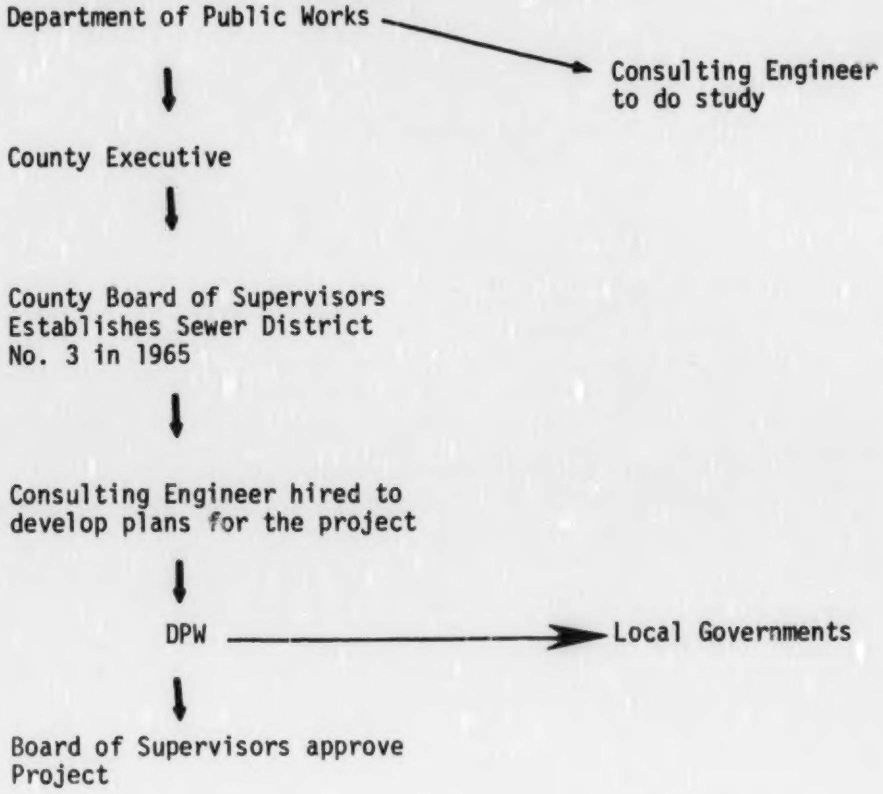
2. A-95 requests for comment is the only formal review procedure in which it participates. No guidelines for environmental statements or other reviews. Limited input into Sewer District No. 3 project; no written comments on reports submitted to it have been made.

Nassau County Sewer District No. 3 Grant Application Process

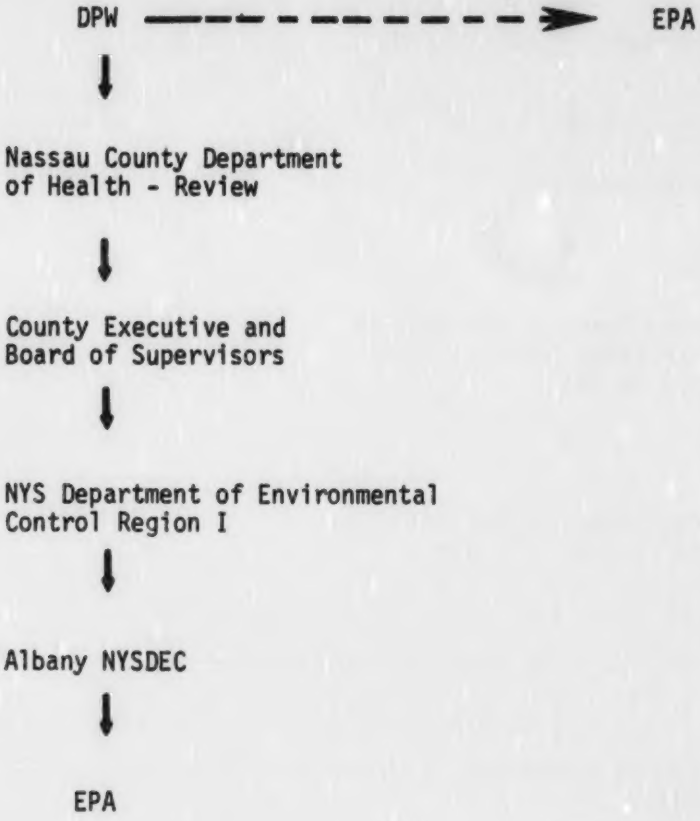
The following Flow Chart presents the sequence of major actions comprising the grant application process. Note the lack of effective provision for environmental review and for public participation in decision making.

GRANT APPLICATION PROCESS FLOW (Nassau County Sewer District No. 3)

FIGURE 9


Department of Public Works
Consulting Engineer to do study
County Executive
County Board of Supervisors Establishes Sewer District No. 3 in 1965
Consulting Engineer hired to develop plans for the project
DPW
Local Governments
Board of Supervisors approve Project

Flow of decisions for new projects


DPW
EPA
Nassau County Department of Health - Review
County Executive and Board of Supervisors
NYS Department of Environmental Control Region I
Albany NYSDEC
EPA

CASE EXAMPLE 4: EAST BAY MUNICIPAL UTILITY DISTRICT SPECIAL DISTRICT ONE (CALIFORNIA)

TYPE Multi-jurisdiction/urban

NATURE OF PROJECT

The East Bay Municipal Utility District (EBMUD), a state-chartered authority serves a 277-square mile area in portions of Alameda and Contra Costa Counties along the Eastern edge of San Francisco Bay. Special District One, a separate district within EBMUD, provides wastewater treatment at a centralized plant for a 75-square mile area.

Special District One's 1970 population was 618,600 with 689,300 forecast for 1995.

The project will considerably upgrade the level of treatment of the single wastewater treatment plant now serving Special District One. Primary treatment will be provided for 290 mgd capacity and secondary treatment for 168 mgd capacity in wet weather. Secondary treatment for 120 mgd average flow, compared to 85 mgd now receiving primary treatment, will be provided. An estimated 95% of the BOD will be removed with the new facilities, compared to 30% BOD removal at present. The existing outfall diffuser into San Francisco Bay will be modified to provide an initial dilution of 100:1 rather than the 25:1 presently available.

PROJECT CHRONOLOGY

March 21,1968	San Francisco Bay Regional Water Quality Control Board adopts standards (Resolution 68-8) for wastewater discharged by the plant serving Special District One. These standards can only be met by a higher level of treatment of discharged wastewater.
August 1970	EBMUD's engineers prepare preliminary reports on wastewater interception, treatment and disposal directed at extensive improvements to Special District One treatment plant.
November 3,1970	Voters in Special District One authorize issuance of up to $60 million in general obligation bonds by EBMUD for improvements to wastewater treatment plant serving the District.

January 1971	Final reports on wastewater interception, treatment and disposal regarding proposed improvements to Special District One treatment plant prepared by consulting engineers for EBMUD.
April 1971	State Water Resources Control Board issues report entitled "Clean Water for San Francisco Bay," an impetus to the project.
June 1971	Interim Water Quality Control Plan for the San Francisco Basin adopted by the California Regional Water Quality Control Board.
September 1971	EBMUD authorized issuance of $6 million in bonds for initial work on improvements to Special District One plant.
January 1972	EBMUD application for federal funds approved by State Water Quality Control Board and receives priority certification.
Early 1972	EBMUD's Application for federal grant for the project received by regional EPA.
March-April 1972	EBMUD's application for federal grant receives pre-evaluation review by regional EPA Office of Construction Grants.
April 1972	EBMUD's consulting engineers prepare environmental assessment on the project.
May 1972	A-95 review recommendation on the project made by metropolitan clearinghouse.
November 27,1972	Regional EPA issues Negative Declaration on the project.
January 1,1973	Industrial waste source control ordinance required to be adopted by federal grant conditions goes into effect.

SPECIFIC COMMENTS APPLICABLE TO THIS CASE STUDY

Federal Environmental Protection Agency

1. The high level of environmental awareness in this region makes any pollution control project, even a relatively non-controversial one, a sensitive and visible public issue.

2. A major reason for considering plant expansion was the need to handle wet weather flows and to upgrade the level of treatment to meet mandated

state and regional standards. There was no significant alternative to the selected plan. An EIS would not have produced any appreciable change in the project but would have delayed it and increased the costs by 12 per cent. There was no significant pressure for an EIS from the public or any individual local governmental agency.

3. From regional EPA's point of view, and within the confines of the project as conceived by the applicant (EBMUD) and certified by the state, the major unsettled points were the treatment process, wet weather flows and the adoption of an industrial waste ordinance. The project as a whole was a response to environmental quality concerns voiced by the Regional Quality Control Board.

4. Regional EPA feels that there is some inherent conflict in having the environmental assessment prepared by the same engineer who will do the project design. New regional procedures identify environmental considerations at an early stage, close to project conception.

5. State Water Quality Resources Board is a very effective and confident agency, setting priorities for projects in the region and remaining involved through the grant process and periodically monitors treatment plant compliance with grant conditions. The regional EPA office and the Board have an agreement on procedures and practices of mutual interest.

6. If the project were being reviewed now more attention would be accorded its secondary environmental effects and its impact on air quality.

State Clearinghouse (Director of Management Systems)

1. Under the strong California Environmental Quality Act (CEQA) the State Clearinghouse reviews the project after certification by State and regional Water Quality Resource Boards and prior to submission to Federal EPA. The State seeks comments (from State agencies only) early in the procedure to permit problems to be resolved and will not give its approval until all issues are settled.

2. CEQA provides for a review considering the "growth inducing" nature of the project and measures that have been taken to mitigate any detrimental effects of the project.

3. The most compelling comment received during the State Clearinghouse review was from the state agency responsible for air quality. They stated that in critical air basins, such as the EBMUD is in, new wastewater plant capacity should be limited as a deterrent to growth and further degradation of air quality. They advanced a series of projections based on zero immigration and low household size that would minimize growth; projections that

the State Water Quality Resource Board accepted for the project.

4. At the time of the EBMUD review the state did not require as complete an Environmental Impact Report (the equivalent of an Environmental Assessment) as it now does at an early stage of the project.

Metropolitan Clearinghouse (Association of Bay Area Governments ABAG)

1. The Association of Bay Area Governments is responsible for A-95 review. This review is only advisory and has a limited purpose; i.e., to determine if a project is consistent with regional plans and development. From ABAG's viewpoint the project satisfied these general criteria.

2. However, ABAG felt that a full Environmental Impact Statement should be prepared. Its reasons were that the critical problems of solids (i.e., sludge) disposal and alternative methods of treating wet weather flows (and their relation to treatment capacity) had not been adequately covered in the applicant's environmental assessment.

3. The Agency's general feeling was that environmental reviews, especially the EIS, are not especially valuable as they are now constituted. Usually by the time the EIS is prepared project commitments have been made and there is pressure to abbreviate the review process to avoid cost increases. Often the EIS turns out to be more of an informational document, reporting on what has already occurred, than an aid in decision-making. The Agency would like to see, as the State is now doing, full environmental reports geared to decision-making at an early stage in the application process.

4. A key reason why the State did not accord the project a full environmental review was that CEQA was only extended to Special Districts in April 1973, after this project was processed.

5. ABAG staff felt strongly that EPA and the environmental review process had not yet faced the potential conflict between improved wastewater treatment, land development and air quality. Because of the cost factors in wastewater treatment, new plant and interceptor capacity are often larger than is needed for immediate demands, stimulating additional development and degrading air quality. In the Bay Region where the "no growth" positions is valid and popular these issues are especially acute.

6. When ABAG asked HUD to comment on the collective impact of its programs, such as urban renewal, on population and development in Special District One there was no response from HUD.

7. The A-95 procedure doesn't allow for non-governmental contacts for input, a weakness in the review process.

8. The special district, such as EBMUD, presents particular problems. It is oriented to providing services and is often unrelated to political and development realities at district and sub-district levels. Its independence and specialization may insulate it from having to resolve environmental issues in a manner accessible to the public.

State Water Quality Resources Board

1. The Agency is sensitive to the growth inducing aspect of wastewater treatment capacity and its relation to air quality. Hence they will try to avoid adding capacity in critical air basins.

2. They are also encouraging the regionalization of wastewater treatment facilities, partially to forestall adverse secondary effects.

3. Since the EBMUD project the State's attitude to conditions that could effect the environment has changed considerably. Thus, the Agency now has detailed project report guidelines, requires a full environmental report concurrent with project application and seeks EPA concurrence at the concept approval stage. Also, the question of solid disposal from the plant would be handled as a"separate project"rather than a"grant condition".

4. The Agency is aware of the time, effort and delays that permits and approvals in the environmentally-sensitive Bay Area impose on wastewater treatment projects. There are several semi-independent state and regional groups responsible for safeguarding the environment (e.g., Bay Conservation and Development Commission) whose concurrence is required.

5. The Agency is very firm in settling water quality and waste discharge standards that are mandatory for applicants and plant operators.

East Bay Municipal Utilities District

1. There were no public hearings on the project; the proposal for a wastewater treatment plant simply appeared as an Agenda Item on one of the elected District Board's meetings. The District interpreted the affirmative 1970 vote on the bond issue as adequate public endorsement for the project.

2. The District's staff or Board does not seek to have projects approved by the legislatures of the municipalities for which it provides water and wastewater treatment. As an independent authority it assumes legislative concurrence and works directly with the public works agencies on project implementation.

3. Rather than treat the problems of solids disposal, wet weather flows and water reclamation in an EIS, the District sought, successfully, to have them handled as "Special Conditions" in the grant. Thus, while the District conducts special studies of these critical environmental issues the project is permitted to move ahead.

4. The District believes that sludge disposal, which the environmental assessment hardly mentions, will be a major problem within the next five years. This condition, associated with the large increase in plant capacity, will become a key environmental issue.

5. Despite the claims of the environmental groups, the District does not believe that there is much potential for economically reclaiming and marketing reclaimed water. However, as water reclamation is a visible and central public issue in the region, the District is studying it as part of the grant conditions.

6. The District has a Committee on Environmental Review which is working on a master plan for water supply, but not on other more immediate environmental problems.

7. The District considers the review, permit and approval procedure delaying, arbitrary and partly wasteful. (To add 300' to its Bay outfall 13 agencies had to approve and/or issue permits.) They would like to see one agency with clear and consolidated authority in the water pollution control area.

8. The metropolitan A-95 review seems to be considered a minor matter, almost an inconvenience.

Municipal Agencies in the Affected Area

Special District One serves an area that includes several municipalities, namely the cities of Alameda, Albany, El Corrito, Berkeley, Emoryville, Kensington, Oakland, Piedmont and part of Richmond. To gain some idea of the relation of EBMUD to local government, some public agencies (the City of Oakland and the Alameda County Planning Department) were contacted. Their combined comments are noted below.

1. Operating departments in the largest municipality served, Oakland, are pleased to have the wastewater treatment handled by a capable special purpose agency removed from local politics. They seem to defer to EBMUD on most technical matters.

2. EBMUD usually works directly only with local agencies, such as public works and sewer departments, connected with its direct area of operations.

Doesn't seek contact or coordination with other groups, such as planning departments and legislatures, unless there is a specific reason.

3. There is no mechanism for close coordination between municipal agencies and EBMUD and no assurance that agency recommendations will be followed. In fact, state law gives a presumption of necessity to special districts; for example, exempting water transmission facilities from zoning restrictions.

4. EBMUD does not usually send a copy of its agenda to municipal agencies and the agencies very rarely attend EBMUD meetings. One of the agencies thought that a hearing had been held on the project, when none had taken place.

5. City engineers and DPW's will receive copies of project application and plants for comment but usually do not respond in any detail.

6. Municipalities are now beginning to use the state environmental review process to examine and question major projects.

Public and Environmental Groups

1. EBMUD's staff is highly competent but its policy and project decisions are not subject to public accountability. It is a large, powerful and independent agency operating outside of any direct legislative or public scrutiny. Hearings on budgets, plans or projects are rarely held and the District practices and projects are not usually seriously questioned or intensively reviewed by constituent municipalities. Meeting agendas are not generally circulated.

2. EBMUD is usually able to persuade the state legislature and municipalities within its service area to approve the project requests. It has an experienced and skilled public information staff and state legislative representative.

3. EBMUD's Board is not considered representative of its customers. Regulations tend to favor the re-election of incumbents and discourage public participation in decisions.

4. Environmental groups did not feel that the growth and land development issue was too relevant for this project, as it will not provide interceptors to any undeveloped areas. However, provisions for additional wet weather capacity could lead to industrial expansion and add to air pollution burdent.

5. Organized groups felt that the sludge disposal and water reclamation problems are germane to the project but these were given only cursory

consideration during the environmental reviews. They expect these items will become very important in future years as demands for water increase and the options for solid disposal narrow.

The following Flow Chart illustrates the grant application process which applied to this project. Note the prominent State review function. (See Figure 10, Page 65)

GRANT APPLICATION PROCESS FLOW Figure 10

San Francisco Bay Regional Water Quality Control Board adopts standards for wastewater discharged by Special District One treatment plant

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EBMUD's engineers prepare final reports on wastewater treatment and disposal for Special District One plant

↓

Voters in Special District One approve bond issue for improving treatment plants; in effect giving local approval for the project

↓

Interim basin plan certified by state WQCB

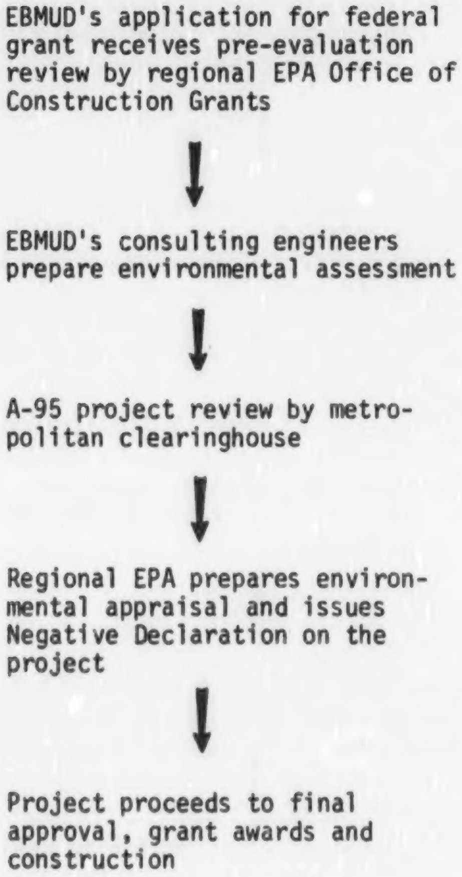
↓

EBMUD application for federal funds approved by State Water Quality Control Board (SWQCB) and receives priority certification

↓

State clearinghouse review of project

↓



EBMUD's application for federal grant receives pre-evaluation review by regional EPA Office of Construction Grants

EBMUD's consulting engineers prepare environmental assessment

A-95 project review by metropolitan clearinghouse

Regional EPA prepares environmental appraisal and issues Negative Declaration on the project

Project proceeds to final approval, grant awards and construction

APPENDIX B

CHRONOLOGY OF ASSESSMENT GUIDELINES

Responsibility for the administration of wastewater treatment facility construction grant programs was transferred from the Federal Water Quality Administration (FWQA) of the Department of the Interior to the Environmental Protection Agency when the latter was established in December 1970. Under both agencies various guidance documents were promulgated in order to assist grant applicants in the preparation of environmental assessments. These guidance issuances have evolved from an early relatively informal document to a well developed presentation embodied within EPA's regulations for the "Preparation of Environmental Impact Statements".

The assessment preparation guidelines applicable to documents reviewed in this study are, in order of their issuance, as follows:

October 1970
FWQA

Suggested Format for Environmental Assessment

This guidance document (see page 69)is part of an FWQA issuance COM 3200.1 (Appendix D) addressed to the "Environmental Assessment of FWQA Actions." It requires the applicant to provide information identifying the project location and a brief description of the nature of the project. The document lists various topics which must be treated under NEPA in the preparation of environmental impact statements, including, for example, consideration of alternatives, irreversible and irretrievable resource commitments, etc. However, no concrete guidance is provided to assist the applicant in generating proper and acceptable responses. Furthermore, the "Suggested Format" merely lists the NEPA factors in a manner which suggests that they all can be adequately addressed on the single sheet form. Secondary effects are not cited at all.

December 1971
EPA

Environmental Assessment Guide

This document represents a considerable advance over its predecessor. The basic listing of items to be addressed is essentially the same. However, a fair amount of appended material is provided which both advises the applicant with regard to the substantive issues his assessment should treat and furnishes a topical list of key items to be considered in the development of an assessment for a particular project. These topical items include both socio-economic and aesthetic considerations. In addition, specific topics to be discussed in connection with public participation in the project are outlined.

January 1973 Preparation of Environmental Impact Statements Interim Regulations (40 CFR 6, see Appendix F See Page 157)

Paragraph 6.56 (b) of these regulations discusses both procedural and substantive considerations applicable to environmental assessments of proposed wastewater treatment projects. Assessment content requirements are specified and include evaluation of alternatives, treatment of NEPA issues as well as a description of how the project design will minimize adverse environmental effects. This issuance, aside from the detail it contains, is significant in that it is a transitional step in which guidance has acquired regulatory force.

It is expected that EPA will in the future require that the environmental assessment appear as a component in the applicant's overall Facility Plan. It is also expected that EPA will provide additional guidance on the treatment of alternatives and that this guidance will address environmental as well as economic costs.

FWQA FORMAT FOR ENVIRONMENTAL ASSESSMENT

Environmental Assessment

Waste Treatment Works Construction Grants

Project Identification

Name of Applicant:

Address:

Project Number:

Location of Project:

Brief Description of Project:

I. Probable impact of the project on environment:

II. Any probable adverse environmental effects which cannot be avoided:

III. Alternatives considered with evaluation of each:

IV. Relationship between local short-term uses of environment and maintenance and enhancement of long-term productivity:

V. Any irreversible and irretrievable commitment of resources:

VI. Public objections to project, if any, and their resolution:

Applicant's Representative

Comments by State water pollution control agency:

APPENDIX C

EVALUATION OF ENVIRONMENTAL ANALYSES

This Appendix presents reviews of environmental analyses of wastewater treatment projects which were prepared by EPA regional offices and local agencies for the four case examples studied under this contract. The analyses reviewed are as follows(assessment preparation dates are shown):

	Type of Analysis	Issuing Agency
1.	Environmental Assessment (10/70) Environmental Statement	Hot Springs, Arkansas EPA Region VI
2.	Environmental Assessment (4/73 est.)	Jacksonville, Florida
3.	Environmental Assessment (6/73) Environmental Statement	Freeport, New York EPA Region II
4.	Environmental Assessment (4/72) Environmental Appraisal and Negative Declaration	East Bay MUD, California EPA Region IX

The review procedure, in all cases, was designed to evaluate the environmental assessment documents in terms of the criteria in force at the time of their preparation. Federal guidelines embodying these criteria have evolved from summary issuances to more complete regulations during the period October 1970 to January 1973 as discussed in Appendix B. (Page 67)

The reviews of the environmental analyses were based wholly on the contents of the documents themselves and do not reflect ancillary information derived during the course of case example site visits. This information is presented in Appendix A (Page 25). During the examination of the analyses, particular attention was directed to such key factors as degree of adequacy, range of environmental considerations treated, secondary effects, bases for the evaluation of alternatives and general quality of presentation.

Although there are differences among the analyses, both in terms of scope and manner of treatment, a few generalizations are possible:

- In all cases the environmental assessments were prepared in behalf of the local agency by a consulting engineering firm. Because of the preparer's orientation, technical considerations tended to outweigh environmental concerns.

- Secondary effects received virtually no consideration or were treated in a superficial manner.

- The relationship of the proposed project to state areawide water quality management plans is usually not treated explicitly.

- Adherence of the analyses to EPA guidance materials varied from case to case.

- There was a general tendency to underplay, if not totally ignore public reaction to proposed projects.

- Documentation of public participation was extremely scant and the views of groups opposed to a given project, when presented at all, are mentioned casually. Expressions of public opinion were often presented as unanimously in favor of the proposed project.

- The discussion of alternatives, in the assessment analyses, was markedly slanted toward a technical and engineering orientation, in which capital and operating costs were given considerable weight vs purely environmental considerations. Generally, the alternatives considered in most detail are various treatment processes as opposed to major issues such as site options.

- Most of the assessments were not well organized in that adequate background information was not supplied. Frequently, for example, it was not obvious why the project in question was required until a relatively late point in the presentation.

ENVIRONMENTAL ASSESSMENT REVIEW
City of Hot Springs, Arkansas
Environmental Assessment by Applicant
and State Agency

General Comments

This document is somewhat repetitious and is wholly unorganized, reflecting no awareness of (or at least no response to) guidance materials applicable to the preparation of wastewater treatment system environmental assessments. It consists of seven pages of paragraphs, often not sequentially related, arbitrarily broken into numbered groups without topical headings. Considerable information and data whose inclusion would be necessary in order to make this Assessment a self-sufficient presentation is lacking.* This Assessment does not specifically identify the applicant (City of Hot Springs) nor the co-issuing State Agency (West Central Arkansas Planning and Development District) nor is it dated.

Specific Comments

The Assessment presents no general background information regarding the City of Hot Springs, no organized statement explaining its current wastewater system problems and no introductory description of the proposed project. Through scattered sentences throughout the document it can be inferred that the project will construct:(a) a new single treatment plant to replace three existing plants,and (b) sewer line construction. With regard to the plant other than the facts that the process will include "tertiary treatment" and chlorination, no description of the treatment method is presented. With respect to the sewer line portion of the project, there is no indication whatever of whether this will consist of repair, replacement, extension or some combination of these. Further, the areas these lines serve or are to serve are neither identified or described. It is stated several times that the City of Hot Springs is currently under a "Cease and Desist Order" issued by the Arkansas Pollution Control Commission in March of 1970. While the nature of this "Cease and Desist Order" is not explained in the Assessment, it is clear from other program documentation that it prohibits new sanitary sewer connections in the City (presumably until a satisfactory wastewater collection and treatment system is built).

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* While self-sufficiency was not a requirement when this Assessment was prepared, more background information would have made the overall presentation more understandable.

Alternatives are alluded to, but are not individually identified, described or discussed. These alternatives are referenced with respect to the treatment facilities only. It is in no way made clear (in the Assessment) how and to what degree they would affect sewer line requirements and planning. The Engineering Report of 1970, prepared by Albert Switzer and Associates, proposed ten alternative plans which were reviewed by Federal (EPA) and State Authorities. One of these, Plan #7, which is based on a single treatment plant discharging into Lake Catherine, is the proposed project. General considerations leading to the rejection of other alternative plans are briefly summarized (costs, adequacy of treatment, unacceptability of discharge into Lake Hamilton, etc.), but no supporting details pertaining to these factors are provided.

The prospective environmental impacts of the proposed project do not appear to have been really analyzed. Instead, they are addressed in such general statements as: "... the proposed sewerage projects will enhance the environment for wildlife ..." ; "... removal of the Hot Springs sewage from Lake Hamilton will greatly enhance the use of this lake for body contact water sports ..." "... odors will be minimized by proper design, operation and maintenance of the facilities"; "... insect infestation is expected to be reduced from present level..." and so forth. It is also stated that "... the area considered for the location of the plant was chosen as that which offers the best combination of the least impact upon land use and environment but consistent with good engineering practice." The specific factors considered in arriving at these conclusions are not discussed, nor even identified. As stated earlier, the precise manner in which the current sewage system problem impacts the City of Hot Springs, as well as the scope of this impact, is not described other than through the implications of the "Cease and Desist Order". Similarly, the prospective benefits to the City and prospective secondary environmental effects of the project are not specified other than by a statement that the local citizens understand that the program is necessary "... in order to improve the public health and enhance the environment so as to provide an attractive location for tourists..." No mention is made of the socio-economic implications of new sewer connections once the project is completed.

The effects of project construction are briefly touched on in terms of temporary disruption of "traffic patterns" during the installation of sewer lines.

The Assessment considers that there will be "no irreversible or irretrievable commitments of resources as a result of the implementation of the proposed regional plan." It is pointed out that the plant site, at the expiration of the estimated useful life of the treatment facility (40 years) could be restored "to a natural state and could be utilized for other land use." The consideration of short-term use vs. long-term productivity which seems applicable here is not mentioned at all. Further, no estimate of the land area to be pre-empted for the construction site is provided.

The discussion of public reaction to the project states that the local citizens have been and will be kept fully informed of program plans and that "there are no known public objections to the project regarding ecological or environmental impact." On the whole, the impression is given that the program has local support. A problem, not addressed in the Assessment, is that the residents of the Lake Catherine area, which is to receive the plant discharge, are far from happy about the project and feel that they will be unfairly imposed on by the City of Hot Springs.

DRAFT AND FINAL ENVIRONMENTAL IMPACT STATEMENTS FOR HOT SPRINGS, ARKANSAS

General Comments

Both of these Statements are reasonably adequate presentations of the technical considerations involved in Hot Springs sewage system problems and the proposed measures for their alleviation. The documents suffer to a degree from rather poor organization of some of the topical areas discussed and from inadequate depth of treatment in one case and total omission in another. The Final Statement differs from the Draft version partly in that it discusses certain areas in greater length, particularly the environmental setting, the proposed facilities, adverse effects of the proposed action (on the environment), and conclusions and recommendations.* The Final Statement embodies all commentary received as of the date of its preparation.

Specific Comments(on the Final Statement)

Early in the Statement text it is explained that the project will involve new sewer installation of existing rehabilitation sewers and the construction of a new treatment plant. These improvements will be located within or near Hot Springs. However, there is no introductory statement as to why the proposed facilities are required or the nature of the key problems which initially prompted the grant application. It is not until discussions of water quality standards, existing waste sources and existing municipal wastewater treatment facilities (sub-sections of I B "Environmental Settings - Page 53) are reached that some understanding is gained of the City's problems. Additional information of this sort appears in sub-section I C, "Description of Proposed Wastewater Facilities." For example, the discussion of proposed measures for rehabilitating existing sewer lines begins with a description of the current poor condition of these lines.

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* Final Statement is discussed as it is the more complete of the two versions.

The discussion of the prospective environmental effects of the proposed action is distributed between Section II entitled "Environmental Impact of the Proposed Action" and Section III which is called "Adverse Effects of the Proposed Action on the Environment." Adverse effects are discussed briefly in sub-section II A ("Adverse Impact of the Proposed Project") which also contains, out of context, the reassuring prediction that "the total impact of the proposed project will enhance aesthetics in the area..." and "will ultimately increase the economic productivity in this recreation and resort oriented economy." Section III discusses potential adverse impacts such as noise, erosion and thermal pollution and indicates either how these will be insignificant to begin with or how they will be minimized or ameliorated. Section II, which considers the environmental impact of the project in toto, should detail both the favorable and unfavorable anticipated environmental consequences. It should also discuss secondary environmental effects expected to ensue as a result of the proposed actions. (These effects are mentioned, but only in terms of occasional references to prospective enhancement of recreation, agriculture and other activities.)

The Statement identifies and discusses various alternatives, but does not adequately detail the prospective environmental impact of each. However, the brief summary of considerations which led to the selection of the preferred alternative is clear and well presented. A major shortcoming of this discussion is the failure to consider the no-action alternative. Analysis of this alternative would have afforded an opportunity to project the probable cumulative impact of the wastewater from the City of Hot Springs and the suburban areas into Lake Catherine and Lake Hamilton. Such a projection, in turn, would have been helpful in conveying to the reader a more vivid understanding of the need for the wastewater facility construction program.

Section VII, "Public Participation in the Proposed Project," is somewhat superficial in its treatment of a key issue of local public concern, as follows - the effluent from the proposed facility is to be discharged into Lake Catherine rather than Lake Hamilton. These water bodies geographically close, but are very different with respect to local land use development patterns. The Lake Hamilton area is intensely developed while the environs of Lake Catherine have been maintained in a semi-pristine state. The idea of dumping "wastewater" into Lake Catherine had the effect of uniting the local residents in opposition to the project. While much of the commentary reproduced in the Final Statement consists of protests (including both letters from individuals and petitions) from Lake Catherine residents, the Statement text only briefly notes these and does not discuss the issue at length. It is stated that Lake Catherine has a greater assimilative capacity for the effluent than does Lake Hamilton. However, the fears of the Lake Catherine residents that the effluent discharge may be detrimental to health and to property values are not adequately addressed.

ENVIRONMENTAL ASSESSMENT OF SLUDGE DISPOSAL FACILITIES - BUCKMAN STREET SEWAGE TREATMENT PLANT - SEWERAGE IMPROVEMENT PROGRAM FOR THE CITY OF JACKSONVILLE, FLORIDA

General Comments

This Assessment was prepared as part of a grant application for EPA funding for the construction of sludge disposal facilities planned to serve the "Buckman Street Plant and Core Area, Sewer District No. 2 or North District and the Southwest District." The facility is also to be used for the "final disposal of septic tank sludge until homes with septic tanks are tied into the municipal sewer system." This project is presented as a component of the "Consolidated City of Jacksonville's Sewerage Improvement Program which is designed to provide sewage collection and treatment for the Core Area and the present suburban areas of Jacksonville." The implementation of this program was triggered by the City's concern that the St. Johns River and other waterways were being severely polluted by sewage discharges from residential, commercial and industrial sources (which, in some cases, were untreated).

Much of the material in the Assessment appears to be based on information and analyses embodied in various reports prepared by Flood and Associates, Inc., who are "Design Consultants" for Jacksonville.

In general, the content of the Assessment is, as far as it goes, essentially relevant to the project. The overall presentation is, in large part, fairly clear. However, more detailed background discussion would have contributed to a more complete understanding of certain aspects of the project. Some parts of the Assessment are presented in a manner suggesting that the reader is familiar with, or has available information sources bearing on, the overall sewerage program and specific studies relating to this project in particular.

Specific Comments

This Assessment generally follows the Federal guidelines which were applicable at the time of its preparation (EPA document issued 12/14/71). It does not, however, identify the local applicant agency nor does it indicate the date of preparation. A section by section analysis follows:

Section I - "Brief Background" - provides an account of local pollutant sources and the effects of disposal of sewage and industrial wastes into local streams while the analysis is somewhat brief, it provides sufficient information to make clear the need for the Sewerage Improvement Program and for the Sludge Disposal Facilities. However, the background discussion does not present the sludge disposal project into a perspective which would be clear to a reader wholly unfamiliar with the local scene. For example, it is stated that the "Master Sewerage Reports contain many maps and charts of Jacksonville and DuVal County areas which indicate clearly the project service areas referred to in this environmental assessment." However, no general chart or map is appended to or incorporated within the Assessment document. Hence, it is impossible, from the Assessment alone, to form any meaningful impression of the nature or location of the areas to be served by the project or to understand the relationship of the project to the overall Sewerage Disposal Program.

Alternatives are treated in the following two sections - "Summary of Alternative Project Solutions" (Section II) and "Comparison of Alternatives and Selection of Proposed Process" (Section III).

Section II considers three principal disposal approaches - to land, to the ocean and to the atmoshphere (incineration). Various procedures appropriate to these headings are identified and their respective advantages and disadvantages are listed. Most of these appraisals address specific environmental, economic and technical considerations.

Various land disposal procedures are considered, including lagooning, land filling with dewatered sludge and underground disposal. Each method is analyzed in terms of its advantages and disadvantages which include both economic and environmental considerations.

Ocean dumping is presented as unsuitable because, among other reasons, "this method has been rejected by the regulatory agencies including the Environmental Protection Agency".

Incineration, which is proposed approach, is categorized as "disposal to the atmosphere." This could be misleading to the extent that only the volatile fraction of sludge material remaining after filtration is so disposed. The residue (about 30%) is dry ash which requires land disposal. (This poses far fewer problems, however, than land disposal of wet sludge.)

Section III, "Comparison of Alternatives and Solution of Proposed Process", presents six process sequences which were considered by Flood and Associates, Inc. These involve various combinations of process elements such as heat treatment filtration and incineration. The end products, which must be disposed of on land, are either wet solids or dry ash. Each process sequence is analyzed in terms of operating costs per ton of solids, operating rates, engineering opinions of probable future difficulties and the probable amount of released odor. The selected sequence was sludge storage - centrifugation - heat treatment - filtration - incineration - ash disposal. The unit operating cost for this process was about the highest of any presented, but this consideration was overcome by pointing out that some of the other processes, which appeared to be cheaper on initial analysis, would in fact, prove more expensive because of necessary modifications which would be required to make them perform satisfactorily.

This Section (III) does not provide any systematic treatment of possible environmental effects (other than odor) of the alternatives considered. Also, there is no consideration of short-term vs. long-term consequences or of resource commitments as specified in Federal guidelines. The Assessment should have included a sentence or two expressing this. The selection of the proposed process reflected primarily an engineering choice based predominately on technical considerations.

Section IV - "Detailed Environmental Evaluation of Proposed Facilities" - addresses various prospective effects of the project such as its impact on natural environment and potential social consequences. The effects of facility construction are distinguished from those of operation.

The discussion of effects on water addresses expected improvements in the quality of the St. Johns River and the salt marshes between it and Nassau Sound in terms of expected safety of various recreational activities and the favorable impact on marine biota. In general, however, the presentation relates more to the expected benefits from the Sewerage Improvement Program as a whole than from the specific project under consideration. The degree to which the project is expected to contribute to the benefits expected from the Sewerage Improvement Program is not addressed.

The analysis of the expected impact of the project on air is not wholly satisfactory. The discussion makes clear that incineration could cause the emission of fly ash, SO_2, and "possibly" nitric oxides. A wet scrubber is to be installed which will "remove most of the fly ash and some of the sulfur dioxide and nitric oxides." It is then pointed out that the addition of sodium bicarbonate to the scrubber water would remove all of the SO_2 and NO_x, but it is not stated whether this will be done or not. Further, there is no discussion of disposal of the scrubber water or its possible implications to the ground water. There is no mention of the relationship of prospective emissions to ambient air quality standards. It is explained why odors emitted by the facility should be minimal.

Effects of the project on land are presented in terms of the benefits of dry ash disposal (for which only small landfill areas will be required). The disposal facility is to be located on the Buckman Street plant grounds. "near the middle of the industrial waterfront..."

With respect to social impact of the project, facility operation is expected to generate noise; however, this is not regarded as an adverse effect because the facility will be housed in a "closed three story building and the noise will be effectively muffled thereby". Further, the manufacturer of the sludge disposal facilities is responsible for meeting noise, odor, flysash, and "noxious gases" release specifications.

The effects of construction are briefly summarized and, as presented, should not be objectionable.

Section V - "Opportunity and Extent of Public Participation" - is brief, but well presented. It is stated that the overall program has public support and that the incineration plan which is proposed will avoid the adverse effects of dumping wet sludge. Information about the program is said to be well disseminated, both to local government officials and to the public. However, the position taken in the Assessment is that "... the final decision on which process sequence is to be built..." must be left to expert opinion.

ENVIRONMENTAL ASSESSMENT REVIEW
"Environmental Assessment Statement for Disposal Facilities To Serve the Inc. Village of Freeport"

Prepared for Department of Public Works, County of
Nassau, New York
Prepared by Charles R. Velzey Associates., Inc.
Consulting Engineers

The project discussed in the Assessment is the extension of interceptor sewer service to Freeport and the construction of a new pumping station in order to permit discharge of the City's wastewater into the disposal facilities of the Nassau County Disposal District No. 3. This sewer extension is proposed in lieu of replacement of Freeport's existing wastewater treatment plant which is to be abandoned.

This Assessment is dated June 1973 and should theoretically reflect the guidance provided in EPA's Interim Regulation for the Preparation of Environmental Impact Statements (which includes instructions for assessment preparation) which was issued January 1973. In this respect the document is deficient in that several topical areas specified in the EPA Regulation (e.g., Relationship between local short-term uses of man's enviornment and the maintenance and enhancement of long-term productivity; a discussion of problems and objections raised by other Federal, state and local agencies and by interested persons in this review process) are not specifically addressed. However, it is not known whether the County had a copy of the Regulation available at the time the Assessment was prepared.

The consideration of individual alternatives is well presented.

Specific Comments

The main text is preceeded by an Introduction which provides a history of events leading to the formulation of the proposed project plan. An analysis of individual sections of the Assessment follows:

Section 1, "Description of the Proposed Action", explains why the action is required and discusses the proposed project as a recommended alternative selected from a group of considered alternatives. A tabulated summary of estimated construction costs of these alternatives appears (though out of place) in this Section.

Section 2, "Project Area", provides an adequate description of the incorporated Village of Freeport and the Sewage Disposal District No. 3. It does not discuss the polluted condition of Hempstead Bay which is a key factor in the selection of the proposed project plan. At the end of the Assessment, however, are summaries of various study reports which cover this subject.

Section 3, "General Description of Alternatives", lists the various alternative approaches considered, including the "no action" alternative and the recommended plan. (These alternatives are discussed in Section 4.)

Section 4, "Detailed Description and Environmental Assessment of Alternatives", provides a much better than average presentation in which each alternative plan is analyzed in terms of its prospective effects on such environmental factors as ground water, biota, air quality, stream flow and many other biological and physical parameters. Secondary environmental effects are also identified and considered. Temporary local impacts due to construction are briefly addressed. The environmental assessment of each alternative is preceded by a description and cost estimate. As in Section 3, both the "no action" and the recommended alternative are treated. (Technically, the prospective environmental impact of the proposed action should have been discussed in a separate Section preceding that presenting the other alternatives.) The outstanding shortcoming of this Section is its failure to explain why the proposed alternative was considered preferable to all the others, although it is obvious why certain ones were rejected.

The Assessment, as stated, does not consider the relationship between local short-term uses of man's enviornment and the maintenance and enhancement of long-term productivity, or any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. In addition, the Assessment contains no account of any public meetings or other input which can be attributed to public participation.

It is noted that the Letter of Transmittal from Charles R. Velzy Associates, Inc. (who prepared the Assessment) to the Commissioner of Public Works contains the comment that "...the assessment statement adheres to the requirements of the National Environmental Policy Act of 1969". This comment is incorrect on two counts:

a. NEPA requires Environmental Statements from Federal agencies only. Any stipulation that an environmental assessment, report or other analysis must be prepared by an applicant stems only from the specific Agency (to which the application is made) and is an administrative or regulatory requirement.

b. Assuming (a) above were not the case, the Assessment would not "adhere" to NEPA requirements because it lacks various NEPA dictated inclusions (see preceding discussions).

ENVIRONMENTAL IMPACT STATEMENT REVIEW
"Environmental Impact Statement on Wastewater
Treatment Facilities Construction Grants for
Nassau and Suffolk Counties, New York"
Draft and Final Version
Prepared by the Environmental Protection Agency
Region II

General Comments

This Statement discusses several wastewater treatment facility construction projects in Nassau and Suffolk Counties, New York. As of the date of issuance of the Final Statement (July 1972), five grants had "recently" been awarded in each County and the ten projects were in the construction stage. As of the date of the Draft Statement (December 1971), seven grant offers had been made and three facilities were under construction. No individual Statement had been previously issued for any one of these projects. (The major differences between the Draft and Final Statements (other than the inclusion of commentary and response in the latter) are extensive revisions of the treatment of alternatives and some expansion of the presentation of conclusions and recommendations.)

Specific Comments

The Summary statement at the beginning implies that the projects are under consideration. It does not make clear that grant offers had already been made and that some facilities were already under construction (the Summary is dated May 1972). Also, the phrase "...should the proposal be implemented..." is employed when, in fact, many projects had already been initiated. Specific comments on individual Sections of the EIS follow. (Section numbers correspond to those in the Final version.)

Section II - "Overview". This preliminary synoptic account identifies the projects to which the Statement is pertinent, outlines some of the major prospective environmental impacts of the program and presents a summary discussion of the alternatives. Although the inclusion of this Section is somewhat gratuitous (with reference to standard Statement format), it is helpful and could have been more so had additional consideration been given to its organization. For example, a general statement which initially identifies and summarizes the key problem areas with respect to treatment plant effluents and to ground water recharge and ocean, bay and Long Island Sound outfall would have provided some perspective in advance of the subsequent discussions.

Section III, "Description of the Pertinent Projects", indicates the status of each facility and provides brief technical summaries.

Section IV, "Background", is, on the whole, satisfactory. It covers several pertinent areas, including geography, demographic trends, land use, identification of polluting industrial sources, past and present water pollution control programs, State and local water resources planning and management agencies and local water (surface and subsurface) resources and their qualities, local biotic populations and recreational activities.

Section V, "Environmental Impact of the Project", organizes the discussion of prospective environmental effects of the various programs on a categorical basis as follows: sewering, treatment plants, ocean outfall and discharge of the treated effluents. (The distinction between the last two categories is minor in principle, since the effluents are, for the most part, to be discharged either into the ocean directly or into the waters of Long Island Sound. Much of the discussion under "ocean outfall" treats the effects of constructing an 84 inch sewer pipe from the Wantagh sewage plant to an ocean discharge point about 2.5 miles off Jones Beach.) At the beginning of this Section there is an introductory statement to the effect that impacts of the various categories of construction activity identified above tend to be similar and, accordingly, it is implied that these can be satisfactorily treated generically. Further, it is stated that "... following this general discussion there will be comments pertaining to specific projects."

Although specific comments do appear, they are rarely directed to the analysis of particular impacts that (within a particular category of activity) may differ from one project to another.

A more serious shortcoming of this Section is its complete failure to treat the prospective secondary socio-economic effects of the different projects. Even quite obvious considerations such as impacts on taxes, land values, growth trends and employment during the construction of the facilities are not mentioned at all. Aside from the fact that Statement content should include an assessment of secondary effects, there is also the possibility that in some instances these impacts could vary from one project to another even more than effects on the natural environment. The compatability of this possibility with generic treatment should have been examined in the Statement.

Section VI, "Adverse Effects Which Cannot Be Avoided", discusses three categories of effects (though not systematically) as follows: those certain to occur; those which might be severe, but may be minimized; and those which are not independent of future decisions (such as sludge disposal at sea which may prove unacceptable or ground water level decline which might be offset in the future as recharge technologies are developed).

Section VII, "Alternatives to the Projects", discusses a variety of technical approaches to Long Island's wastewater problems. Much of the discussion is addressed to the explanation of why, at this time, ground water recharge is not feasible, although it is made clear that its desirability is in no way in question. The "no action" alternative is considered as well as certain "non-structural" approaches submitted to EPA for consideration. (These approaches are, in effect, regulatory devices for restricting water use and do not meet objectives.) This Section considers the physical and chemical implications of the implementation (as opposed to "non-structural") alternatives in reasonable detail and also provides cost comparisons for economic assessment of some of the specific alternative techniques presented. The Final Statement version of this Section was augmented (with respect to the Draft version) in response to comments and suggestions. As is true of the other Sections reviewed, however, prospective or possible secondary socioeconomic effects of the considered alternatives are not presented.

Section VIII, "Local Short-Term Uses of or Effects on the Environment Which Are Associated with the Long-Term Benefits to be Derived from the Proposed Projects", is an excellent presentation. It consists of a listing of the various long-term benefits expected to result from implementation of the projects with particular reference to anticipated improvement in local water supply quality resulting from reduced groundwater pollution. This Section also contains a table which identifies short-term adverse environmental effects of the different project categories (e.g., sewering, outfall, etc.)

Section IX, "Irreversible or Irretrievable Commitments of Resources Which Would be Involved in the Implementation of the Proposed Projects", address this topic in a satisfactory manner. It also touches on the question of secondary effects through the statement that "regionalization of sewage treatment will encourage increases of industrialization and population density in areas which are already considered fully developed, unless adequate measures are taken." It is not explained, however, how such "increases" would necessarily involve irreversible or irretrievable resource commitments.

Section X is a presentation of "...problems and objections raised by all reviewers". The volume of commentary received was too great to permit individual responses. Instead, the comments were treated categorically. It is stated that "comments and questions resulting from the public hearing on January 3, 1972 have been treated in this Section as well as in the text ... We believe this format will satisfy the requirements of the National Environmental Policy Act of 1969." It is interesting to note that this is the first point in the text (page 194) at which the public hearing is mentioned. This Section contains a Table which indentifies both the major areas of concern and the identity of the commentators with respect to each.

Appendix I presents the petition of the Environmental Defense Fund (dated June 1971) addressed to the Office of Water Quality, EPA requesting that the Office prepare:

a. An Environmental Impact Statement covering wastewater facility construction grants (in Nassau and Suffolk Counties) and,

b. An EIS "...setting forth the long-range assumptions and policies that govern the disbursement of Federal funds for construction of sewage treatment facilities in these two counties."

The degree to which the Statement is responsive to (b) above is embodied in the Conclusions and Recommendations Section. The policy-like conclusions state, in effect, that (a) the construction and operation of wastewater treatment systems "are essential to the protection of Long Island's water supply," (b) water resource planning and management programs (for Long Island) must be implemented (to assure proper utilization of water resources), and (c) a combination of ground water recharge and ocean outfall effluent disposal is the preferred approach. There is no responsiveness to the request for individual facility Statements.

ENVIRONMENTAL ASSESSMENT REVIEW
"Final Environmental Impact Statement, East
Bay Utility District, Special District No. 1,
Water Pollution Control Improvements."
(April 1972)
Prepared for: East Bay Municipal Utility District
Prepared by: Consoer, Townsend & Associates, Consulting Engineers

General Comments

This Assessment discusses a proposed expansion and upgrading of wastewater treatment facilities in Oakland, California. The document, incorrectly, entitled "Environmental Impact Statement" rather than "Assessment", is by far the best of those examined in the course of this study. The format is, on the whole, though not in all respects, reasonably consistent with applicable EPA guidelines. The expository contents are, for the most part, well organized and in all instances clearly presented. Unlike most of the other environmental analyses of wastewater treatment facility projects reviewed, this assessment does consider secondary effects (such as growth) of the proposed facility in addition to immediate impacts on the natural environment.

Specific Comments

Analyses of individual Sections follow.

Section I, "Description of the Project", presents a summary of the existing facilities together with a brief account of their current operating problems. The proposed facilities are adequately presented, but it is not made clear that the project is to provide expansion and upgrading of the present installation as opposed to its total replacement. This Section also includes a demographic analysis of Special District No. 1 (which is to be served by the new facility) showing the population growth trends that were used for planning purposes.

Section II, "Probable Impact of the Project on the Environment", is unusually well organized. It first systematically treats the effects of construction with respect to specific environmental impacts on water, air and land as well as to such factors as noise, public safety and others. Then, under the heading of "Long Term Impact", the effects of facility operation are individually considered. The last sub-section, "Secondary Impact", includes brief discussions of "Compatability with Growth and Land Use" and "Undeveloped Areas". The latter makes the important point (in relation to secondary socio-economic effects) that "this project will not result in sewering any undeveloped areas". The sub-section also contains a brief paragraph entitled "Public Controversy" stating that there was no controversy, that the voters authorized a bond issue and that "no objections were made at the public hearing prior to adoption of the Interim Basin Plan, which included this project." Although this paragraph may be considered (from a puristic viewpoint) out of place, its inclusion in the assessment is refreshing in itself.

Section III, "Probable Adverse Effects Which Cannot Be Avoided", discusses the expected consumption of raw materials for both construction and operation. This topic would more appropriately have been addressed in the Section on "Irretrievable and Irreversible Commitments of Resources." Other sub-sections deal with the unavoidable impacts of plant effluents (liquid ash and stack gases) and "Mitigation Measures Proposed to Minimize the Impact". Although other environmental analyses reviewed did, on occasion, mention proposed mitigation measures, this document is the only one which specifically addressed this topic as a separately identified area.

Section V, "Alternatives to the Proposed Project", examines various treatment, disposal and other options, including those selected for the proposed project. These are discussed in terms of both efficiency and environmental impacts, but not in terms of cost comparisons. The "no action" alternative was briefly discussed. The position taken in the assessment was that this alternative could not be considered "because to do so would result in violation of a compliance schedule to upgrade treatment levels, which has been imposed on East Bay Municipal Utility District by the State of California". Actually, the "no action alternative" is considered to the degree that it is rejected on the grounds that it "would not enhance the receiving water quality and would entail legal problems (because "no action" would violate a compliance schedule to upgrade treatment, impact on East Bay MUD by the State). The preferred sludge treatment method is incineration. The manner of ash disposal is left open, though various approaches are considered.

Section VI, "Short-Term versus Long-Term Productivity", presents the latter as deriving from prospective improvement of the aquatic environment and from the fact that the plant will have potential use as a water reclamation facility. The question of short-term uses is not addressed.

Section VII, "Irreversible and Irretrievable Commitments of Resources", references (categorically) the prospective consumption of building materials, energy and chemicals. This subject was already treated in Section III.

Section VIII, "Secondary Impact of Population Growth", projects 1995 sewage flow as a function of anticipated population increase. It would seem that this "impact" is direct rather than "secondary". The purpose of this Section is, apparently, to provide a basis for the designed secondary treatment capacity of the proposed project - 120 MGD (average).

REVIEW OF ENVIRONMENTAL IMPACT APPRAISAL

Note

This Appraisal, prepared by EPA Region IX, was generated in response to the application of East Bay Utility District, Special District One for construction grant support for a wastewater treatment plant to serve this District (No. 1). The Appraisal is accompanied by a transmittal letter stating that the project impact will not be significant and that, accordingly, an Environmental Impact Statement will not be prepared. (This letter is a Negative Declaration.)

General Comments

This document summarizes most of the information contained in the Environmental Assessment prepared for the same project for the East Bay Utility

District by Consoer, Townsend and Associates. It also includes some information which does not appear in the Assessment. The Appraisal is clear and well organized and, in terms of format, approximates a "mini" EIS.

Specific Comments

Section 1, "Brief Description of Project" provides a clear presentation of the project and identifies the population to be served.

Sections 2 and 3 present clear and concise reviews of the project and its prospective environmental impacts, both favorable and unfavorable. The latter reflect, almost entirely, the effects of construction. (The effects of operation are expected to be, on overall balance, predominately beneficial.) Section 4, "Alternatives Considered with Evaluation of Each", does not identify the various treatment processes discussed in the Assessment, but merely states that considered alternatives, on pilot testing, were found inferior to the proposed method.

Section 5, "Relationship Between Local Short-Term Uses of Environment and Maintenance and Enhancement of Long-Term Productivity", does not address this question explicitly. It mentions capital investment, future potential for water reclamation and the fact that the treatment plant "will provide a facility which will enable the district to meet the wastewater discharge requirements..." The short-term/long-term relationship would have been better presented by weighing the long-term benefits of the project (i.e., improvement in receiving water quality against the temporary environmental costs associated with the effects of construction).

Section 6, "Any Irreversible and Irretrievable Commitments of Resources", begins with a straightforward (and conventional) reference to labor and materials that would be committed and then qualifies this by stating that while the commitment "is not of itself irreversible, or totally irretrievable, it is not likely that the plant location would be changed following this much refurbishment." (The position expressed here is technically correct; in general, materials used in construction programs can be regarded as committed, at least for the life of the project. The possibility of subsequent reuse or salvage of these materials is usually poor to fair; the likelihood of reuse of land is often good.)

Section 7, "Public Objections to the Protest and Their Resolution", mentions a suit filed against the District on the grounds that the District's water treatment program should be reclamation rather than disposal oriented. (This suit is not referenced in the earlier Assessment; however, the date of initiation is not provided and it could have been subsequent to the date of Assessment issuance.) The Appraisal takes the position that the proposed project "... is necessary to meet discharge requirements..." and that the 2MGD water reclamation facility incorporated within the project to supply treatment water will serve as a test means for advanced treatment processes of the future. The balance of this Section briefly considers the "no-action" and other alternatives, none of which are directly germane to the subject addressed.

The Appraisal ends with "Conclusion" which implies, though it does not explicitly state, that (a) the adverse effects of the project will not be significant,and (b) these effects will be outweighed by the benefit to accrue, i.e., the improvement of San Francisco Bay Water Quality through improvement of effluent quality. The transmittal letter containing the Negative Declaration states that the "...environmental impact appraisal ... summarizes... the reasons why a statement is not required." This is not quite accurate. The Conclusion of the Appraisal summarizes the effects, but does not include a comprehensive evaluation of these by EPA indicating its judgment that, in aggregate, these effects are not "significant". Although this may appear to be a technicality, under NEPA requirements a Statement is required unless it is demonstrated that the prospective environmental effects are not expected to be "significant". This judgment should be made explicit in the appraisal which is publicly issued as the basis for the "Negative Declaration".

APPENDIX D

FEDERAL WATER QUALITY ADMINISTRATION
WASHINGTON, D. C. 20242

ORDER

COM 3200.1
October 15, 1970

SUBJECT: Environmental Assessment of FWQA Actions

1. PURPOSE. The purpose of this order and appendices is to set forth procedures for FWQA compliance with the National Environmental Policy Act of 1969, P.L. 91-190, relating to: (a) assurance that Federal agency actions have a minimum adverse impact on the environment, and (b) preparation and review of Environmental Statements on Federal agency actions.

2. BACKGROUND. The National Environmental Policy Act and Executive Order 11514 on Protection and Enhancement of Environmental Quality require each Federal agency to submit a statement to the Council on Environmental Quality (CEQ) on any Federal or federally assisted project which has or would have a significant effect on the quality of the human environment.

3. GENERAL.

a. Interpretation of Requirement for Environmental Statements. As the very nature of FWQA programs is concerned with water quality protection and enhancement, FWQA should view the specific requirement for filing Environmental Statements with the Council on Environmental Quality as applying to the impact of its actions designed to improve water quality on components of the environment other than water. As defined by the Interim Guidelines of the Council on Environmental Quality on preparing and reviewing Environmental Statements, Appendix A, significant environmental effects which should be analyzed in Environmental Statements include those which degrade the quality of the environment, curtail the range of beneficial uses of the environment, or serve short-term, to the disadvantage of long-term, goals. They also include actions which may have both beneficial and detrimental effects even if it is felt that the benefits outweigh the detriments. Example: interference with recreational uses of an area and

Distribution: A; B; C; F; G; H; J

Attachments

disturbance of scenic or historical sites resulting from construction of waste treatment facilities through FWQA grant programs or because of recommendations of FWQA technical or planning studies. Every effort must be exerted to avoid or resolve these problems, but where some unavoidable adverse environmental impact will result from FWQA activities, an Environmental Statement must be submitted to CEQ.

b. FWQA Actions to Which Environmental Statement Requirement Applies. Based on the CEQ Interim Guidelines, FWQA is required to submit Environmental Statements on certain actions in the following areas:

(1) Direct FWQA construction of facilities;

(2) Waste treatment works construction grants;

(3) Research and development grants and contracts involving construction of facilities or any other action potentially disruptive of the environment;

(4) Completed plans and any implementation actions of FWQA-assisted river basin planning agencies under the planning grants program;

(5) Final recommendations of reports on technical studies and basin plans; and

(6) Policies, regulations, and legislative proposals generated by FWQA.

FWQA regulatory actions are excluded from the requirement to submit Environmental Statements by the CEQ guidelines. This does not reduce the obligation to assure that water quality standards and enforcement recommendations are developed with the same concern for environmental factors as other FWQA programs, but submission of a formal Statement to CEQ is not required in these instances.

c. The Need for Environmental Assessments of FWQA Activities. Environmental assessments are necessary to:

(1) Assure that FWQA programs consider fully the effects of their actions or proposals on other components of the environment.

(2) Assure that FWQA programs conduct their activities in such a way as to avoid or minimize those adverse environmental impacts.

(3) Determine when a formal Environmental Statement will be necessary. The Environmental Statement is to be prepared only on those projects where it has been determined, based on the environmental assessment, that a significant or controversial adverse environmental impact on the environment, which cannot be avoided, will result from an FWQA-conducted or supported activity.

d. Usefulness of Requirement. The need to conduct environmental assessments of FWQA actions in order to determine whether such actions will have an adverse impact on the environment, and the requirement to submit an Environmental Statement on any action which would have a major or controversial impact on the environment, provide FWQA with an excellent opportunity to strengthen its programs and coordinate its actions with other Federal, State, and local agencies. The requirement for preparation and review of a formal statement provides a very useful tool for self-evaluation and program direction. FWQA should take full advantage of this mechanism.

4. RESPONSIBILITIES.

a. Regional Directors. Regional Directors have the major responsibility for assuring that adverse environmental impacts are avoided or minimized; and for assuring the adequacy of the Environmental Statements in the areas of construction grants, research and development grants and contracts, basin planning grants, FWQA technical studies and basin planning reports, subject to normal Headquarters review channels.

b. Assistant Commissioner for Administration and Assistant Commissioner for Program Area. The Assistant Commissioner for Administration has joint responsibility with the Assistant Commissioner(s) whose programs will use the facility, for minimizing adverse environmental impacts and preparing Environmental Statements on FWQA laboratory, pilot plant, or other facility construction.

c. Assistant Commissioner for Environmental and Program Planning. The Assistant Commissioner for Environmental and Program Planning assures that all FWQA policies, regulations, and legislative proposals are developed so as to avoid or minimize any adverse environmental effects; prepares or reviews any Environmental Statements that are necessary on these proposals. Other procedures and responsibilities relating to development of Environmental Statements on legislative proposals, regulations, or policy proposals are given in subpar. 5d.

d. Assistant Commissioners for Program Areas. Each Assistant Commissioner is responsible for providing guidance on conducting environmental assessments of the programs under his purview, and on preparing formal Environmental Statements on proposed program actions which may have a significant environmental impact. Each Assistant Commissioner is also responsible for evaluating the effectiveness of compliance with this order by the programs under his purview.

5. PROCEDURES.

a. General Requirements.

(1) All Environmental Statements must be transmitted formally by the Commissioner to the Office of the Secretary, for subsequent transmittal to the Council on Environmental Quality. Statements will be submitted to the Commissioner in accordance with regular program clearance channels (e.g., Environmental Statements on construction grants through the Construction Grants and Engineering Branch, Office of Operations). For national policy, regulations, and legislative proposals, any necessary Environmental Statements will be transmitted to the Commissioner through the Assistant Commissioner for Environmental and Program Planning.

(2) Headquarters overview of this activity will be maintained along the lines of the July 7 Memorandum on "Coordination with the Council on Environmental Quality", Appendix B. That is, development of overall procedures and responsibility for assessing the adequacy of these procedures rests with the Assistant Commissioner for Environmental and Program Planning. Evaluation of the performance of individual programs in implementing these requirements is the responsibility of the Assistant Commissioner in whose area the program functions. The first of each month, the Regional Directors are directed to provide a list, by name, of all Environmental Statements prepared or under preparation for each program area to the Assistant Commissioner concerned.

b. Effective Date. These procedures become effective for all pending and new actions immediately in accordance with the detailed guidance in each appendix. In addition, the FWQA programs subject to the Environmental Statement requirements should be reviewed as soon as possible to determine what projects or activities initiated since January 1, 1970, might have a significant environmental impact, and preparation of any necessary Statements on such actions should be expedited.

c. Specific Procedures for FWQA Programs. Appendixes C through H are procedures for developing, reviewing, and transmitting Environmental Statements in each of the following areas:

(1) Appendix C. Construction Grants;

(2) Appendix D. Research, Development, and Demonstration Grants and Contracts;

(3) Appendix E. Basin Planning Grants;

(4) Appendix F. FWQA Basin Planning;

(5) Appendix G. FWQA Technical Studies; and

(6) Appendix H. FWQA Facility Construction.

d. Specific Procedures for FWQA Regulations, Policy, and Legislative Proposals. In the development of proposed policies, regulations, or legislative proposals, an assessment of the environmental impact must be made at an early stage through contacts with other environmental agencies as appropriate. If such a proposal would have an unavoidable adverse impact on the environment, a draft Environmental Statement must be prepared and submitted for review by other environmental agencies in accordance with Section 8 of the CEQ Interim Guidelines. Primary responsibility for carrying out the environmental assessment and, if necessary, preparing the Statement related to an existing FWQA program rests with the office carrying out the program. Responsibility for carrying out the environmental assessment and, if necessary, preparing a Statement on new programs not closely related to an existing FWQA office, rests jointly with the office originating the proposal and the Office of Environmental and Program Planning.

e. Procedures for Review of FWQA Environmental Statements by Other Agencies.

(1) Mechanisms. The CEQ Interim Guidelines stress the need to assure adequate review of projects and Environmental Statements by all concerned citizens and agencies. Existing mechanisms for doing this are to be used, where possible, and local public hearings on significant or controversial issues are encouraged. On certain controversial issues, the views of State environmental agencies, in addition to the water pollution control officials, may be needed. Specific procedures for review are included in the program area Appendixes C-H.

(2) Federal Agencies. The regional office should determine what Federal environmental agencies should be consulted on a case-by-case basis in accordance with Section 8 of the CEQ Interim Guidelines. If the initial environmental assessment indicates that an adverse environmental impact would be involved and therefore preparation of an Environmental Statement is necessary, in compliance with Section 8 of the Guidelines, agencies shall be given at least 30 days to review the draft

Environmental Statement. This should be timed to the regional review of project applications or reports. In accordance with detailed procedures at Appendixes C-H, copies of the draft Environmental Statements will be provided to the Council on Environmental Quality at the following address: 722 Jackson Place, N. W., Washington, D. C. 20006.

(3) Furnish Background Information. Each agency asked to review a draft Environmental Statement will be given sufficient background information on the area of its concern. Ideally, the draft Environmental Statement should be sufficiently complete that additional documentation is not required. However, the request for review should indicate what office of FWQA can supply additional information to the reviewer, if needed.

f. Work Planning. In terms of work planning, the requirements for conducting an environmental assessment and developing Environmental Statements are to be considered a regular part of effective administration of the programs discussed in Appendixes C-H. These tasks should be phased into the normal operation and timing of programs as much as possible, and thus, although they may add significantly to the workload, would not constitute separate work plan items.

David D. Dominick

David D. Dominick
Commissioner

FEDERAL
REGISTER
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COUNCIL ON ENVIRONMENTAL QUALITY

STATEMENTS ON PROPOSED FEDERAL ACTIONS AFFECTING THE ENVIRONMENT

Interim Guidelines

April 30, 1970.

1. *Purpose.* This memorandum provides interim guidelines to Federal departments, agencies and establishments

for preparing detailed environmental statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, as required by section 102(2)(C) of the National Environmental Policy Act (Public Law 91–190) (hereafter "the Act"). Underlying the preparation of such environmental statements is the mandate of both the Act and Executive Order 11514 (35 F.R. 4247) of March 5, 1970, that all Federal agencies, to the fullest extent possible, direct their policies, plans and programs so as to meet national environmental goals.

2. *Policy*. Before undertaking major action or recommending or making a favorable report on legislation that significantly affects the environment, Federal agencies will, in consultation with other appropriate Federal, State, and local agencies, assess in detail the potential environmental impact in order that adverse affects are avoided, and environmental quality is restored or enhanced, to the fullest extent practicable. In particular, alternative actions that will minimize adverse impact should be explored and both the long- and short-range implications to man, his physical and social surroundings, and to nature, should be evaluated in order to avoid to the fullest extent practicable undesirable consequences for the environment.

3. *Agency and BOB procedures*. (a) Pursuant to section 2(f) of Executive Order 11514, the heads of Federal agencies have been directed to proceed with measures required by section 102(2)(C) of the Act. Consequently, each agency will establish no later than June 1, 1970, its own formal procedures for (1) identifying those agency actions requiring environmental statements, (2) obtaining information required in their preparation, (3) designating the officials who are to be responsible for the statements, (4) consulting with and taking account of the comments of appropriate Federal, State and local agencies, and (5) meeting the requirements of section 2(b) of Executive Order 11514 for providing timely public information on Federal plans and programs with environmental impact. These procedures should be consonant with the guidelines contained herein. Each agency should file seven (7) copies of all such procedures with the Council on Environmental Quality, which will provide advice to agencies in the preparation of their procedures and guidance on the application and interpretation of the Council's guidelines.

(b) Each Federal agency should consult, with the assistance of the Council on Environmental Quality if desired, with other appropriate Federal agencies in the development of the above procedures so as to achieve consistency in dealing with similar activities and to assure effective coordination among agencies in their review of proposed activities.

(c) It is imperative that existing mechanisms for obtaining the views of Federal, State, and local agencies on proposed Federal actions be utilized to the extent practicable in dealing with environmental matters. The Bureau of the Budget will issue instructions, as necessary, to take full advantage of existing mechanisms (relating to procedures for handling legislation, preparation of budgetary material, new policies and procedures, water resource and other projects, etc.).

4. *Federal agencies included*. Section 102(2)(C) applies to all agencies of the Federal Government with respect to recommendations or reports on proposals for (i) legislation and (ii) other major Federal actions significantly affecting the quality of the human environment. The phrase "to the fullest extent possible" in section 102(2)(C) is meant to make clear that each agency of the Federal Government shall comply with the requirement unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible. (Section 105 of the Act provides that "The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.")

5. *Actions included*. The following criteria will be employed by agencies in deciding whether a proposed action requires the preparation of an environmental statement:

(a) "Actions" include but are not limited to:

(i) Recommendations or reports relating to legislation and appropriations;

(ii) Projects and continuing activities;

—Directly undertaken by Federal agencies;

—Supported in whole or in part through Federal contracts, grants, subsidies, loans, or other forms of funding assistance;

—Involving a Federal lease, permit, license, certificate or other entitlement for use;

(iii) Policy—and procedure-making.

(b) The statutory clause "major Federal actions significantly affecting the quality of the human environment" is to be construed by agencies with a view to the overall, cumulative impact of the action proposed (and of further actions contemplated). Such actions may be localized in their impact, but if there is potential that the environment may be significantly affected, the statement is to be prepared. Proposed actions the environmental impact of which is likely to be highly controversial should be covered in all cases. In considering what constitutes major action significantly affecting the environment, agencies should bear in mind that the effect of many Federal decisions about a project or complex of projects can be individually limited but cumulatively considerable. This can occur when one or more agencies over a period of years puts into a project individually minor but collectively major resources, when one decision involving a limited amount of money is a precedent for action in much larger cases or represents a decision in principle about a future major course of action, or when several Government agencies individually make decisions about partial aspects of a major action. The lead agency should prepare an environmental statement if it is reasonable to anticip a cumulatively significant impact on environment from the Federal acti

(c) Section 101(b) of the Act indicates the broad range of aspects of the environment to be surveyed in any assessment of significant effect. The Act also indicates that adverse significant effects include those that degrade the quality of the environment, curtail the range of beneficial uses of the environment or serve short-term, to the disadvantage of long-term, environmental goals. Significant effects can also include actions which may have both beneficial and detrimental effects, even if, on balance, the agency believes that the effect will be beneficial. Significant adverse effects on the quality of the human environment include both those that directly affect human beings and those that indirectly affect human beings through adverse effects on the environment.

(d) Because of the Act's legislative history, the regulatory activities of Federal environmental protection agencies (e.g., the Federal Water Quality Administration of the Department of the Interior and the National Air Pollution Control Administration of the Department of Health, Education, and Welfare) are not deemed actions which require the preparation of an environmental statement under section 102(2)(C) of the Act.

6. *Recommendations or reports on proposals for legislation*. The requi ment for following the section 102(2 procedure as elaborated in these g lines applies to both (i) agency reco mendations on their own proposals for legislation and (ii) agency reports on legislation initiated elsewhere. (In the latter case only the agency which has primary responsibility for the subject matter involved will prepare an environmental statement.) The Bureau of the Budget will supplement these general guidelines with specific instructions relating to the way in which the section 102(2)(C) procedure fits into its legislative clearance process.

7. *Content of environmental statement*. (a) The following points are to be covered:

(i) The probable impact of the proposed action on the environment, including impact on ecological systems such as wild life, fish and marine life. Both primary and secondary significant consequences for the environment should be included in the analysis. For example, the implications, if any, of the action for population distribution or concentration should be estimated and an assessment made of the effect of any possible change in population patterns upon the resource base, including land use, water, and public services, of the area in question.

(ii) Any probable adverse environmental effects which cannot be avoided (such as water or air pollution, damage to life systems, urban congestion, th to health or other consequences a to the environmental goals set o section 101(b) of Public Law 91–190).

. Alternatives to the proposed action (section 102(2)(D) of the Act requires the responsible agency to "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources"). A rigorous exploration and objective evaluation of alternative actions that might avoid some or all of the adverse environmental effects is essential. Sufficient analysis of such alternatives and their costs and impact on the environment should accompany the proposed action through the agency review process in order not to foreclose prematurely options which might have less detrimental effects.

(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. This in essence requires the agency to assess the action for cumulative and long-term effects from the perspective that each generation is trustee of the environment for succeeding generations.

(v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. This requires the agency to identify the extent to which the action curtails the range of beneficial uses of the environment.

i) Where appropriate, a discussion roblems and objections raised by Federal agencies and State and local entities in the review process and the disposition of the issues involved. (This section may be added at the end of the review process in the final text of the environmental statement.)

(b) With respect to water quality aspects of the proposed action which have been previously certified by the appropriate State or interstate organization as being in substantial compliance with applicable water quality standards, mere reference to the previous certification is sufficient.

(c) Each environmental statement should be prepared in accordance with the precept in section 102(2)(A) of the Act that all agencies of the Federal Government "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making which may have an impact on man's environment."

8. *Federal agencies to be consulted in connection with preparation of environmental statement.* The Federal agencies to be consulted in connection with preparation of environmental statements are those which have "jurisdiction by law or special expertise with respect to any environmental impact involved" or "which are authorized to develop and enforce environmental standards". These al agencies include components of ending on the aspect or aspects of environment involved):

Department of Agriculture.
Department of Commerce.
Department of Defense.
Department of Health, Education, and Welfare.
Department of Housing and Urban Development.
Department of the Interior.
Department of Transportation.
Atomic Energy Commission.

For actions specially affecting the environment of their regional jurisdictions, the following Federal agencies are also to be consulted:

Tennessee Valley Authority.
Appalachian Regional Commission.

Agencies obtaining comment should determine which one or more of the above listed agencies are appropriate to consult. It is recommended that the above listed Departments establish contact points for providing comments and that Departments from which comment is solicited coordinate and consolidate the comments of their component entities. The requirement in section 102(2)(C) to obtain comment from Federal agencies having jurisdiction or special expertise is in addition to any specific statutory obligation of any Federal agency to coordinate or consult with any other Federal or State agency. Agencies seeking comment may establish time limits of not less than thirty days for reply, after which it may be presumed the agency consulted has no comment to make.

9. *State and local review.* Where no public hearing has been held on the proposed action at which the appropriate State and local review has been invited, and where review of the proposed action by State and local agencies authorized to develop and enforce environmental standards is relevant, such State and local review shall be provided for as follows:

(a) For direct Federal development projects and projects assisted under programs listed in Attachment D of the Bureau of the Budget Circular No. A-95, review by State and local governments will be through procedures set forth under Part I of Circular No. A-95.

(b) State and local review of agency procedures, regulations, and policies for the administration of Federal programs of assistance to State and local governments will be conducted pursuant to procedures established by Bureau of the Budget Circular No. A-85.

(c) Where these procedures are not appropriate and where the proposed action affects matters within their jurisdiction, review of the proposed action by State and local agencies authorized to develop and enforce environmental standards and their comments on the draft environmental statement may be obtained directly or by publication of a summary notice in the FEDERAL REGISTER (with a copy of the environmental statement and comments of Federal agencies thereon to be supplied on request). The notice in the FEDERAL REGISTER may specify that comments of the relevant State and local agencies must be submitted within 60 days of publication of the notice.

10. *Use of statements in agency review processes; distribution to Council on Environmental Quality.* (a) Agencies will need to identify at what stage or stages of a series of actions relating to a particular matter the environmental statement procedures of this directive will be applied. It will often be necessary to use the procedures both in the development of a national program and in the review of proposed projects within the national program. However, where a grant-in-aid program does not entail prior approval by Federal agencies of specific projects, the view of Federal, State, and local agencies in the legislative, and possibly appropriation, process may have to suffice. The principle to be applied is to obtain views of other agencies at the earliest feasible time in the development of program and project proposals. Care should be exercised so as not to duplicate the clearance process, but when actions being considered differ significantly from those that have already been reviewed an environmental statement should be provided.

(b) Seven (7) copies of draft environmental statements (when prepared), seven (7) copies of all comments received thereon (when received), and seven (7) copies of the final text of environmental statements should be supplied to the Council on Environmental Quality in the Executive Office of the President (this will serve as making environmental statements available to the President). It is important that draft environmental statements be prepared and circulated for comment and furnished to the Council early enough in the agency review process before an action is taken in order to permit meaningful consideration of the environmental issues involved.

11. *Application of section 102(2)(C) procedure to existing projects and programs.* To the fullest extent possible the section 102(2)(C) procedure should be applied to further major Federal actions having a significant effect on the environment even though they arise from projects or programs initiated prior to enactment of Public Law 91-190 on January 1, 1970. Where it is not practicable to reassess the basic course of action, it is still important that further incremental major actions be shaped so as to minimize adverse environmental consequences. It is also important in further action that account be taken of environmental consequences not fully evaluated at the outset of the project or program.

12. *Availability of environmental statements and comments to public.* The agency which prepared the environmental statement is responsible for making such statement and the comments received available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. sec. 552).

13. *Review of existing authority, policies and procedures in light of National Environmental Policy Act.* Pursuant to section 103 of the Act and section 2(d) of Executive Order 11514, all agencies, as soon as possible, shall review their present statutory authority, administrative regulations, and current policies and procedures, including those relating to loans, grants, contracts, leases, licenses, certificates and permits, for the purpose of determining whether there are any

deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of the Act. After such review each agency shall report to the Council on Environmental Quality not later than September 1, 1970, the results of such review and their proposals to bring their authority and policies into conformity with the intent, purposes and procedures set forth in the Act.

14. *Supplementary guidelines; evaluation of procedures.* (a) The Council on Environmental Quality after examining environmental statements and agency procedures with respect to such statements will issue such supplements to these guidelines as are necessary.

(b) Agencies will assess their experience in the implementation of the section 102(2)(C) provisions of the Act and in conforming with these guidelines and report thereon to the Council on Environmental Quality by December 1, 1970. Such reports should include an identification of problem areas and suggestions for revision or clarification of these guidelines to achieve effective coordination of views on environmental aspects (and alternatives, where appropriate) of proposed actions without imposing unproductive administrative procedures.

RUSSELL E. TRAIN,
Chairman.

[F.R. Doc. 70-5769; Filed, May 11, 1970, 8:46 a.m.]

[illegible]

UNITED STATES GOVERNMENT

- COPY -

Memorandum

USDI, Federal Water Quality Administration

TO : See Below

DATE: July 7, 1970

FROM : Commissioner

SUBJECT: Coordination with the Council on Environmental Quality

This agency has major responsibilities relating to the work of the Council on Environmental Quality. There is an increasing need to assure that the work of FWQA with the Council on Environmental Quality and with the Department on matters relating to the Council on Environmental Quality is fully coordinated.

This memorandum sets forth procedures for assuring such coordination:

I. The Office of Environmental and Program Planning is responsible for providing overall coordination for the work of FWQA relating to the Council on Environmental Quality.

II. All offices of FWQA are responsible for cooperating fully in the work of the Council insofar as it relates to their program responsibilities, in coordination with the Office of Environmental and Program Planning.

III. The procedures for such coordination are as follows:

A. Development of procedures for agency compliance with requirements of the National Environmental Policy Act of 1969, in cooperation with the Council on Environmental Quality.

1. The most immediate need is for procedures to implement Section 102 of the Act. This will call for FWQA submitting to the Council environmental statements on certain of its program activities, in accordance with guidelines prepared by the Council. In addition, FWQA must review environmental statements prepared by other Federal agencies under the same guidelines.

2. Development of overall procedures for meeting these responsibilities is to be coordinated by the Office of Environmental and Program Planning in consultation with all FWQA programs affected.

3. Implementation of the procedures insofar as they relate to individual program elements, will be the responsibility of the individual program offices.

4. Evaluation of the performance of individual program offices in implementing the procedure will be the responsibility of the Assistant Commissioner responsible for those offices.

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Appendix B. Memorandum of 7/7/70
re Coordination with CEQ

5. Evaluation of the FWQA response to the requirements of the Act and Council on Environmental Quality guidelines, with a view to determining overall compliance of the agency with the intent of the Act will be the responsibility of the Office of Environmental and Program Planning.

B. Participation in work groups and other activities of CEQ.

1. It is necessary that FWQA have coordinated participation in work groups and other activities of CEQ.

2. Coordination of agency input to these efforts will be the responsibility of the Office of Environmental and Program Planning.

3. All requests for membership or participation in such activities received by program offices or personnel will be channeled to the Office of Environmental and Program Planning.

4. The Assistant Commissioner for Environmental and Program Planning will coordinate these requests whether received directly from the Council on Environmental Quality or from the Department to assure appropriate participation by FWQA personnel. Where necessary because of conflicting views or the significance of the assignment, the matter will be referred to the Commissioner for designation of the agency representative.

5. Where participation in such work groups involves significant matters of agency policy, progress of the work will be reviewed with the Assistant Commissioner for Environmental and Program Planning to assure that FWQA input reflects overall agency policy and needs.

C. Reporting on the status of participation with the Council on Environmental Quality.

1. It will be the responsibility of the Office of Environmental and Program Planning to maintain awareness of the work of the Council and the status of FWQA's relationships with the Council and to assure that the Commissioner and other key officials are kept aware of these matters.

2. The Office of Environmental and Program Planning will be responsible for providing periodic reports to the Commissioner on the status of working relationships and coordination with the Council on Environmental Quality.

Appendix B.

3. Program officials participating on working groups or other significant activities will keep the Office of Environmental and Program Planning informed in order that these reporting responsibilities can be met.

David D. Dominick

David D. Dominick

Addressees:

Associate Commissioner
Assistant Commissioners
Executive Assistant to the Commissioner
Director of Management
Director of Public Information
Regional Directors

TYPE OF ACTION: Waste Treatment Works Construction Grants

FWQA ORGANIZATION: Construction Grants and Engineering Branch, Division of State and Local Programs, Office of Operations

ENVIRONMENTAL ASSESSMENT TO BE PREPARED BY: Grant applicant, subject to appropriate supplementary comments by the State water pollution control agency.

GUIDELINES: A paragraph will be added to the "Instructions for Completing 'Application for Federal Grant for Sewage Treatment Works under 33 U.S.C. 466 et seq'"regarding "Assurance of Compliance with National Environmental Policy Act of 1969." This will be part of the information kit which potential applicants receive (copies will be reproduced at Headquarters for distribution as will the other information material noted below). This will be supplemented by a format sheet, Figure C-1, suggesting an appropriate outline for the written presentation of the environmental assessment and attaching excerpts from the CEQ Interim Guidelines, Appendix A, regarding the kinds of analyses necessary. The applicant will be asked to provide the written assessment when the grant application is submitted to the State.

This requirement is effective immediately for all new grant applications. The region is also to provide for preparation of environmental assessments by all applicants whose projects are now under Federal review or whose applications are expected to be forwarded by the State.

REVIEW GUIDELINES: These procedures, the Departmental Procedures on Environmental Quality, 516 DM 1-3, and the CEQ Interim Guidelines. The requirement for environmental assessments, the factors which should be considered in reviewing the assessments, the need to obtain comments from other environmental agencies as appropriate, the conditions under which Environmental Statements should be prepared, and the procedures for review and transmittal of Environmental Statements to the Department and CEQ will be reflected in modification of the "Handbook of Procedures - Construction Grants Program" (USDI, FWQA, January 1968), as appropriate.

PROVISION FOR STATE AND LOCAL REVIEW: Local review will be obtained in accordance with established procedures under BOB Circular A-95, modified as necessary to incorporate full environmental review.

State review will be obtained in accordance with existing procedures, modified as necessary to incorporate full environmental review, under the Federal Water Pollution Control Act, as amended. The region will direct the State water pollution control agency to evaluate the environmental impact of a project as part of its overall evaluation. If the State agency approves a project which would have an adverse impact on the environment, adequate justification along the lines of Section 7 of the CEQ *Interim Guidelines* must be included in the written environmental assessment.

REVIEW BY OTHER FEDERAL AGENCIES: The regional office will determine which Federal agencies should be consulted on a case-by-case basis in accordance with Section 8 of the CEQ *Interim Guidelines*. Copies of the environmental assessment received from the applicant will be circulated for review and comment.

FWQA REVIEW CHANNELS: As primary responsibility for review and approval of construction grants rests with the Regional Director, responsibility for the environmental assessment rests with the Regional Director. Prior to approval of any grant offer, regional personnel must review the assessment to assure that environmental matters have been properly considered. An FWQA commentary will be added to the applicant's environmental assessment indicating that this has been done and that the project as proposed will have less detrimental effect on the environment than feasible alternatives.

If the Regional Director, after review of the project and applicant's environmental assessment and after obtaining local, State, and Federal reviews as necessary, determines that the project would have no significant or controversial impact on the environment, the environmental assessment and commentary are to be retained in the regional office (subject to future reference, if necessary). An information copy of the environmental assessment will be provided for the Headquarters Construction Grant files.

If the Regional Director, after review of the project and applicant's environmental assessment and after obtaining appropriate reviews, determines that the project will have a significant impact on the environment which cannot be avoided, is controversial, or raises issues of national policy significance, the following procedures are to be applied:

1. The region will prepare a draft Environmental Statement, in accordance with the CEQ Interim Guidelines. The applicant's environmental assessment and agency commentary should facilitate this task.

2. Two copies of the draft Environmental Statement and any comments already received from other local, State, or Federal agencies will be forwarded to Headquarters (Construction Grants and Engineering Branch) for policy review and transmittal to the Office of the Secretary, DOI, in accordance with 516 DM 2. The region's transmittal memorandum to Headquarters should state action recommendations and indicate what Federal agencies are being asked to review the Statement.

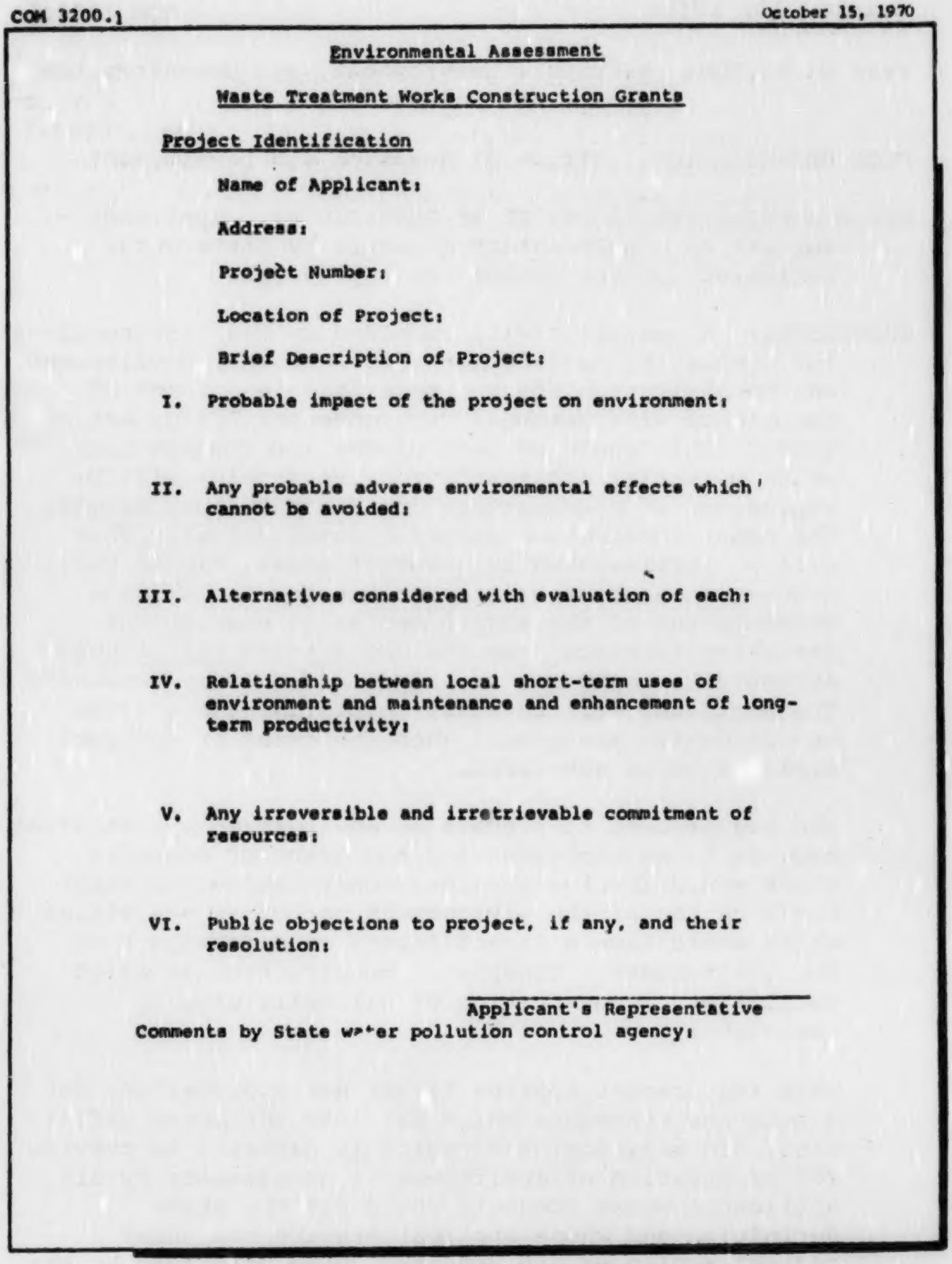
3. Review by other Federal agencies will be obtained in accordance with Section 8 of the CEQ Interim Guidelines. A review time of not less than 30 days is specified by CEQ. Determination of what agencies should review the statement is to be made on a case-by-case basis by the Regional Director. In some cases, it may be necessary to obtain further local and State views. Two copies of comments received, including those from other Interior bureaus, will be transmitted to the Construction Grants and Engineering Branch, upon receipt.

4. Ten copies of the draft Environmental Statement and comments already received will be sent to the Council on Environmental Quality, along with a transmittal memorandum from the region indicating simply that the draft Statement is under review by the Department and listing agencies which have been asked to comment. CEQ procedures require that 10 copies of all comments received from other agencies should be sent to the Council upon receipt. Comments from Interior bureaus are not considered to be "other agency" comments and thus are not subject to this requirement.

5. After receiving the views of commenting agencies and Headquarters, responsibility for submitting the final Environmental Statement rests with the Regional Director, acting under general policy guidance from the Commissioner. The final Environmental Statement in these cases will represent a resolution of the issues insofar as possible.

6. Thirteen copies of the final Statement and other agency comments, plus two copies of all comments received from Interior bureaus, are to be transmitted through normal Headquarters policy clearance channels to the Office of the Secretary

for final action and transmittal to the Council on Environmental Quality. If significant environmental issues remain unresolved, the project will not be approved until after the Department has acted favorably on the final Environmental Statement.



Environmental Assessment

Waste Treatment Works Construction Grants

Project Identification

Name of Applicant:

Address:

Project Number:

Location of Project:

Brief Description of Project:

I. Probable impact of the project on environment:

II. Any probable adverse environmental effects which cannot be avoided:

III. Alternatives considered with evaluation of each:

IV. Relationship between local short-term uses of environment and maintenance and enhancement of long-term productivity:

V. Any irreversible and irretrievable commitment of resources:

VI. Public objections to project, if any, and their resolution:

Applicant's Representative

Comments by State water pollution control agency:

Figure C-1. Format for Environmental Assessment

TYPE OF ACTION: Research, Development, and Demonstration Grants and Contracts

FWQA ORGANIZATION: Office of Research and Development

ENVIRONMENTAL ASSESSMENT TO BE PREPARED BY: Applicant - subject to supplementary comments by State water pollution control agency, as appropriate

GUIDELINES: A paragraph will be added to the "Instructions for Completing Applications for Research, Development, and Demonstration Grants" regarding "Assurance of Compliance with National Environmental Policy Act of 1969." This would be part of the information kit which potential applicants receive (copies will be reproduced at Headquarters for distribution, as will the other information material noted below). This will be supplemented by a format sheet, Figure D-1, suggesting an appropriate outline for the written presentation of the environmental assessment and attaching excerpts from the CEQ Interim Guidelines, Appendix A, regarding the kinds of analyses necessary. The applicant will be asked to provide the written environmental assessment when the grant or contract application is submitted.

The requirement to prepare an environmental assessment applies to an applicant for any grant or contract which would involve physical construction, physical modification of the environment, or other activities which would have a direct impact on some aspect of the environment. Examples: construction of pilot facilities, demonstration of oil spill cleanup techniques.

This requirement applies to all new applications for grants and contracts which fit into the above definition. In addition, the region is directed to provide for preparation of environmental assessments by all applicants whose projects would fit the above definition and whose applications are now under Federal review or are expected to be forwarded by the State.

REVIEW GUIDELINES: These procedures, the Departmental Procedures on Environmental Quality, 516 DM 1-3, and the CEQ Interim Guidelines. The requirement for environmental assessments, the factors which should be considered in reviewing the assessments, the need to obtain comments from other environmental agencies as appropriate, the conditions under which Environmental Statements should be prepared and the procedures for review and transmittal of Environmental Statements to the Department and CEQ will be reflected in modifications of the Office of Research and Development, "Research, Development, and Demonstration Program Grant and Contract Processing System" (USDI, FWQA, December 1969).

PROVISION FOR STATE AND/OR LOCAL REVIEW: The written environmental assessment, prepared by the applicant, will indicate the State and local governmental agencies consulted about the project. For grant and contract applications which are subject to State approval, the region will direct the State water pollution control agency to evaluate the environmental impact as part of its overall evaluation of a project. If the State agency approves a project which would have an adverse impact on the environment, adequate justification along the lines of Section 7 of the CEQ Interim Guidelines must be included in the written environmental assessment.

If the State and local agencies have not been consulted; and/or if the preliminary environmental assessment represents, in the judgment of the regional R&D representatives, a significant issue; the following additional steps will be initiated:

1. The regional office will contact the State and local agencies for comment on the environmental impact of the project. Grant and contract projects which impact the environment but do not require State approval under the Federal Water Pollution Control Act, as amended, must have State review of the assessment of environmental

impact. On certain controversial issues, the views of State environmental agencies in addition to the water pollution control officials may be needed.

2. If warranted, the regional office will coordinate preparation of a more detailed environmental assessment by the applicant and the appropriate State and local agencies.

REVIEW BY OTHER FEDERAL AGENCIES: The regional office will determine which Federal agencies should be consulted on a case-by-case basis in accordance with Section 8 of the CEQ Interim Guidelines. Copies of the environmental assessment received from the applicant will be circulated for review and comment.

FWQA REVIEW CHANNELS: As primary responsibility for review of research and development proposals, in terms of policy and regional or local implications, rests with the Regional Directors, responsibility for the environmental assessment rests with the Regional Director in whose region the project will be conducted. Prior to approval of any grant offer or contract award, the regional office must review the written assessment to assure that environmental matters have been properly considered. An FWQA commentary will be added to the applicant's environmental assessment indicating that this has been done and that the project as proposed will have less detrimental effect on the environment than feasible alternatives.

If the Regional Director, after review of the project and applicant's environmental assessment and after obtaining local, State, and Federal reviews as necessary, determines that the project would have no significant or controversial impact on the environment, the environmental assessment and commentary are to be retained in the regional office (subject to future reference, if necessary). An information copy of the environmental assessment will be provided for the Headquarters R&D project files.

If the Regional Director, after review of the project and applicant's environmental assessment and after obtaining appropriate reviews, determines that the project will have a significant impact on the environment which cannot be avoided, is controversial, or raises issues of national policy significance, the following procedures are to be applied:

1. The region will prepare a draft Environmental Statement, in accordance with the CEQ Interim Guidelines. The applicant's environmental assessment and agency commentary should facilitate this task.

2. Two copies of the draft Environmental Statement and any comments already received from other local, State, or Federal agencies will be forwarded to Headquarters (Office of Research and Development) for policy review and transmittal to the Office of the Secretary, DOI, in accordance with 516 DM 2. The region's transmittal memorandum to Headquarters should state action recommendations and indicate what Federal agencies are being asked to review the Statement.

3. Review by other Federal agencies will be obtained in accordance with Section 8 of the CEQ Interim Guidelines. A review time of not less than 30 days is specified by CEQ. Determination of what agencies should review the statement is to be made on a case-by-case basis by the Regional Director. In some cases, it may be necessary to obtain further local and State views. Two copies of comments received, including those from other Interior bureaus, will be transmitted to Headquarters, upon receipt.

4. Ten copies of the draft Environmental Statement and comments already received will be sent to the Council on Environmental Quality, along with a transmittal memorandum from the region indicating simply that the draft Statement is under review

by the Department and listing agencies which have been asked to comment. CEQ procedures require that 10 copies of all comments received from other agencies should be sent to the Council upon receipt. Comments from Interior bureaus are not considered to be "other agency" comments and thus are not subject to this requirement.

5. After receiving the views of commenting agencies and Headquarters, responsibility for submitting the final Environmental Statement rests with the Regional Director, acting under general policy guidance from the Commissioner. The final Environmental Statement in these cases will represent a resolution of the issues insofar as possible.

6. Thirteen copies of the final Statement and other agency comments, plus two copies of all comments received from Interior bureaus, are to be transmitted through normal Headquarters policy clearance channels to the Office of the Secretary for final action and transmittal to the Council on Environmental Quality. If significant environmental issues remain unresolved, the project will not be approved until after the Department has acted favorably on the final Environmental Statement.

ADDITIONAL POLICY CONSIDERATIONS: It should be noted that the findings of research, development, and demonstration grants and contracts, as well as intramural research activities, may result in action recommendations which could have an impact on the environment if carried out (e.g. use of deep well disposal in some instances). It will be necessary for FWQA programs to assess the environmental impact of carrying out applications of new technology or other R&D development, prior to acting on research findings.

Environmental Assessment

Research, Development and Demonstration Grants and Contracts

Project Identification

Name of Applicant:

Address:

Project Number:

Location of Project:

Brief Description of Project:

I. Probable impact of the project on environment:

II. Any probable adverse environmental effects which cannot be avoided:

III. Alternatives considered with evaluation of each:

IV. Relationship between local short-term uses of environment and maintenance and enhancement of long-term productivity.

V. Any irreversible and irretrievable commitment of resources:

VI. Public objections to project, if any, and their resolution:

VII. Agencies consulted about the project
State Representative's Name:
Local Representative's Name:

____
Applicant's Representative

Figure D-1. Format for Environmental Assessment

TYPE OF ACTION: Basin Planning Grants

FWQA ORGANIZATION: Planning Branch, Division of Planning and Interagency Programs, Office of Operations

ENVIRONMENTAL ASSESSMENT TO BE PREPARED BY: Grantee

GUIDELINES: Instructions will be added to the "Guidelines for Grants, Comprehensive River Basin Planning" indicating that as a condition of the grant award, the grantee will be required to prepare an environmental assessment as a part of the river basin plan. The instructions to grant applicants will be supplemented by a format sheet, Figure E-1, suggesting an appropriate outline for the written presentation of the environmental assessment and attaching excerpts from the CEQ Interim Guidelines, Appendix A, regarding the kinds of analyses necessary. Submission of a written assessment will be required at the time the plan is submitted for FWQA review, and prior to any implementation measures.

Copies of the information for grantees are being reproduced at Headquarters for the regional offices to supply to potential grant applicants. The region is to provide for preparation of environmental assessments by all grantees now formulating plans.

REVIEW GUIDELINES: These procedures, the Departmental procedures on Environmental Quality, 516 DM 1-3, and the CEQ Interim Guidelines. The requirement for environmental assessments, the factors which should be considered in reviewing the assessments, the need to obtain comments from other environmental agencies as appropriate, the conditions under which Environmental Statements should be prepared, and the procedures for review and transmittal of Environmental Statements to the Department and CEQ will be reflected in the proposed "Planning Grants Handbook."

PROVISION FOR STATE AND LOCAL REVIEW: Local review is to be obtained in accordance with established procedures under BOB Circular A-95, modified as necessary to incorporate full environmental review.

State review is to be obtained in accordance with existing procedures, modified as necessary to incorporate full environmental review, under Federal Water Pollution Control Act, as amended.

In all planning activities conducted under Section 3(c) of the Act, the concerned State and local agencies are involved in the planning process as members of the required advisory board.

REVIEW BY OTHER FEDERAL AGENCIES: The regional office will determine which Federal agencies should be consulted on a case-by-case basis in accordance with Section 8 of the CEQ Interim Guidelines. Copies of the environmental assessment received from the grantee will be circulated for review and comment.

FWQA REVIEW CHANNELS: As primary responsibility for review of the basin plan rests with the Regional Director, responsibility for the environmental assessment rests with the Regional Director. Prior to acceptance of the plan, regional personnel must review the assessment to assure that environmental matters have been properly considered. An FWQA commentary will be added to the grantee's environmental assessment indicating that this has been done and that the plan as proposed will have less detrimental effect on the environment than feasible alternatives.

If the Regional Director, after review of the plan and grantee's environmental assessment and after obtaining other local, State, and Federal reviews, as necessary, determines that the plan would have no significant or controversial impact on the environment, the environmental assessment and commentary are to be retained in the regional office (subject to future reference, if necessary). An information copy of the environmental assessment will be provided for the Headquarters Planning Grants files.

If the Regional Director, after review of the plan and grantee's environmental assessment and after obtaining local and State reviews, determines that the plan will have a significant impact on the environment which cannot be avoided, is controversial, or raises issues of national policy significance, the following procedures are to be applied:

1. The region will prepare a draft Environmental Statement in accordance with the CEQ Interim Guidelines. The grantee's environmental assessment and agency commentary should facilitate this task.

2. Two copies of the draft Environmental Statement and any comments already received from other local, State, or Federal agencies will be forwarded to Headquarters (Planning Branch) for policy review and transmittal to the Office of the Secretary, DOI, in accordance with 516 DM 2. The region's transmittal memorandum to Headquarters should state action recommendations and indicate what Federal agencies are being asked to review the Statement.

3. Review by other Federal agencies will be obtained in accordance with Section 8 of the CEQ Interim Guidelines. A review time of not less than 30 days is specified by CEQ. Determination of what agencies should review the Statement is to be made on a case-by-case basis by the Regional Director. In some cases, it may be necessary to obtain further local and State views. Two copies of comments received, including those from other Interior bureaus, will be transmitted to the Planning Branch, upon receipt.

4. Ten copies of the draft Environmental Statement and comments already received will be sent to the Council on Environmental Quality, along with a transmittal memorandum from the region indicating simply that the draft Statement is under review by the Department and listing agencies which have been asked to comment. CEQ procedures require that 10 copies of all comments received from other agencies should be sent to the Council upon receipt. Comments from Interior bureaus are not considered to be "other agency" comments and thus are not subject to this requirement.

5. After receiving the views of commenting agencies and Headquarters, responsibility for submitting the final Environmental Statement rests with the Regional Director, acting under general policy guidance from the Commissioner. The final Environmental Statement in these cases will represent a resolution of the issues insofar as possible.

6. Thirteen copies of the final Statement and other agency comments, plus two copies of all comments received from Interior bureaus, are to be transmitted through normal Headquarters policy channels to the Office of the Secretary for final action and transmittal to the Council on Environmental Quality. If significant environmental issues remain unresolved, the plan will not be approved until after the Department has acted favorably on the final Environmental Statement.

Environmental Assessment

Planning Grants Program - Section 3(c)

An environmental assessment is to be prepared as part of the plan.

The assessment will address itself to the following:

1. Probable impact of the plan on the environment.
2. Any probable adverse environmental effects which cannot be avoided.
3. Alternatives considered with evaluation from environmental standpoint.
4. Relationship between planned local short-term uses of environment and maintenance and enhancement of long-term productivity.
5. Any irreversible and irretrievable commitment of resources.
6. Indicate public objections to plan arising because of environmental issues, if any, and their resolution.

Figure E-1. Format for Environmental Assessment

October 15, 1970 COM 3200.1

TYPE OF ACTION: Section 3(a) Planning Program - FWQA Basin Planning

FWQA ORGANIZATION: Planning Branch, Division of Planning and Interagency Programs, Office of Operations

ENVIRONMENTAL STATEMENT TO BE PREPARED BY: FWQA regional office

GUIDELINES: All plans developed under Section 3(a) of the Federal Water Pollution Control Act, as amended, will include an environmental assessment which addresses itself to the factors described in Figure F-1 and Section 7 of the CEQ Interim Guidelines, Appendix A. Instructions contained in this memorandum regarding conduct of environmental assessments and preparation and review of necessary Environmental Statements will be included as part of the "Planning Handbook." Guidance will also be obtained from the Departmental procedures on Environmental Quality, 516 DM 1-3.

ASSESSMENT OF ENVIRONMENTAL IMPACT: In preparing reports on basin plans developed by FWQA, an assessment must be made of the extent to which recommendations for water pollution control measures might result in damage to other environmental values. Responsibility for assuring that an adequate environmental assessment is made in the plan preparation rests with the Regional Director.

The scope of review and coordination activities with local, State, and Federal agencies under present operating procedures must be enlarged to incorporate review of the environmental impact by appropriate agencies. The region will determine which Federal, State, and local environmental agencies should be consulted on a case-by-case basis.

In submitting a basin planning report for approval by the Commissioner, the Regional Director will include commentary on the significance of any environmental impact of the plan.

Appendix F. FWQA Basin Planning

NEED FOR ENVIRONMENTAL STATEMENT: In developing basin plans, every effort must be made to avoid recommending actions which could have an adverse environmental impact. However, if, after assessing alternative plans and the reactions of other environmental agencies to the alternatives, the Regional Director determines that the best course of action is to recommend measures which might have a significant or controversial environmental impact, a draft Environmental Statement must be prepared. The factors which must be presented are those covered by the environmental assessment.

This determination must be made prior to submitting the plan for Headquarters approval, and the draft Environmental Statement prepared and circulated for review in the manner outlined below. Headquarters review of the draft Environmental Statement will be made in connection with normal clearance of the basin planning report.

REVIEW AND TRANSMITTAL OF ENVIRONMENTAL STATEMENTS:

1. Two copies of the draft Environmental Statement and any comments already received from other local, State or Federal agencies will be forwarded to Headquarters for policy review and transmittal to the Office of the Secretary, DOI, in accordance with Departmental procedures, 516 DM 2. The region's transmittal memorandum to Headquarters should state action recommendations and indicate what Federal agencies are being asked to review the statement.

2. Review of the draft Environmental Statement by other agencies will be obtained in accordance with Section 8 of the CEQ Interim Guidelines. A review time of not less than 30 days is required. Determination of which agencies should review the Statement is to be made on a case-by-case basis by the Regional Director. In some cases, it may be necessary to obtain further local and State

views. Consideration should be given to the need for local public hearings.

3. Ten copies of the draft Environmental Statement and comments already received will be sent to the Council on Environmental Quality, along with a transmittal memorandum from the region indicating simply that the action and draft Statement are under review by the Department and listing agencies which have been asked to comment. CEQ procedures require that 10 copies of all comments received from other agencies should be sent to the Council upon receipt. Comments received from other Interior bureaus are not considered to be "other agency" comments and thus are exempt from this requirement.

4. After receiving the views of commenting agencies and Headquarters, responsibility for submitting the final Environmental Statement rests with the Regional Director, acting under general policy guidance from the Commissioner. The final Environmental Statement will represent a resolution of the issues insofar as possible.

5. Thirteen copies of the final Statement and other agency comments, plus two copies of the comments received from other Interior bureaus, are to be transmitted through normal Headquarters policy channels to the Office of the Secretary for final action and transmittal to the Council on Environmental Quality. If significant environmental issues remain unresolved, the plan will not be approved until after the Department has acted favorably on the final Environmental Statement.

Environmental Assessment

Section 3(a) Planning (FWQA)

All plans developed under Section 3(a) will include an environmental assessment which addresses itself to the following:

1. Probable impact of the plan on the environment.
2. Any probable adverse environmental effects which cannot be avoided.
3. Alternatives considered with evaluation from environmental standpoint.
4. Relationship between planned local short-term uses of environment and maintenance and enhancement of long-term productivity.
5. Any irreversible and irretrievable commitment of resources.
6. Indicate public objections to plan, if any, and their resolution.

Figure F-1. Format for Environmental Assessment

TYPE OF ACTION: Technical Study Reports

FWQA ORGANIZATION: Division of Technical Support, Office of Operations

ENVIRONMENTAL STATEMENT TO BE PREPARED BY: FWQA regional offices

ASSESSMENT OF ENVIRONMENTAL IMPACT: In preparing reports on technical studies carried out by FWQA, an assessment must be made of the extent to which recommendations for water pollution control measures might result in damage to other environmental values.

Responsibility for assuring that an adequate environmental assessment is made in the technical report preparation process rests with the Regional Director. The scope of review and coordination activities with local, State and Federal agencies under present operation procedures must be enlarged to incorporate review of the environmental impact by appropriate agencies. The region will determine which Federal, State and local environmental agencies should be consulted on a case-by-case basis.

In submitting a technical report for approval by the Commissioner, the Regional Director will include a commentary on the significance of any environmental impact of the report recommendations.

NEED FOR ENVIRONMENTAL STATEMENT: In developing report recommendations, every effort must be made to avoid recommending actions which could have an adverse environmental impact. However, if, after assessing the alternatives for water quality protection and the reactions of other environmental agencies to the alternatives, the Regional Director determines that the best course of action is to recommend measures which might have a significant or controversial environmental impact, a draft Environmental Statement must be prepared. The factors which must be analyzed in the Statement are outlined in Figure G-1 and discussed in Section 7 of the CEQ Interim Guidelines, Appendix A.

This determination must be made prior to submitting the study report for Headquarters approval, and the draft Environmental Statement prepared and circulated for review in the manner outlined below. Headquarters review of the draft Environmental Statement will be made in connection with normal clearance of the report.

REVIEW GUIDELINES: These procedures, the Departmental procedures on Environmental Quality, 516 DM 1-3, and the CEQ Interim Guidelines. The requirement for environmental assessments, the factors which should be considered in reviewing the assessments, the need to obtain comments from other environmental agencies as appropriate, the conditions under which Environmental Statements should be prepared, and the procedures for review and transmittal of Environmental Statements to the Department and CEQ will be reflected in the "Technical Studies Reporting System" now being prepared.

REVIEW AND TRANSMITTAL OF ENVIRONMENTAL STATEMENTS:

1. Two copies of the draft Environmental Statement and any comments already received from other local, State or Federal agencies will be forwarded to Headquarters for policy review and transmittal to the Office of the Secretary, DOI, in accordance with 516 DM 2. The region's transmittal memorandum to Headquarters should stat action recommendations and indicate which Federal agencies are being asked to review the statement.

2. Review of the draft Environmental Statement by other agencies will be obtained in accordance with Section 8 of the CEQ Interim Guidelines. A review time of not less than 30 days is required. Determination of which agencies should

review the Statement is to be made on a case-by-case basis by the Regional Director.

3. Ten copies of the draft Environmental Statement and comments already received will be sent to the Council on Environmental Quality, along with a transmittal memorandum from the region indicating simply that the action and draft Statement are under review by the Department and listing agencies which have been asked to comment. CEQ procedures require that 10 copies of all comments received from other agencies should be sent to the Council upon receipt. Comments received from other Interior bureaus are not considered to be "other agency" comments and thus are exempt from this requirement.

4. After receiving the views of commenting agencies and Headquarters, responsibility for submitting the final Environmental Statement rests with the Regional Director, acting under general policy guidance from the Commissioner. The final Environmental Statement will represent a resolution of the issues insofar as possible.

5. Thirteen copies of the final Statement and other agency comments, plus two copies of the comments received from other Interior bureaus, are to be transmitted through normal Headquarters policy channels to the Office of the Secretary for final action and transmittal to the Council on Environmental Quality. If significant environmental issues remain unresolved, the report will not be approved until after the Department has acted favorably on the final Environmental Statement.

Environmental Statement

Technical Reports

All technical reports developed by FWQA which contain recommendations for specific pollution control measures which may have a significant or controversial impact on the environment will include an Environmental Statement which addresses itself to the following:

1. Probable impact of implementing recommendations on the environment.
2. Any probable adverse environmental effects which could not be avoided.
3. Alternatives considered with evaluation from environmental standpoint.
4. Relationship between planned local short-term uses of environment and maintenance and enhancement of long-term productivity.
5. Any irreversible and irretrievable commitment of resources.
6. Indicate public objections to recommendations, if any, and their resolution.

Figure G-1. Format for Environmental Statement

TYPE OF ACTION: Construction of Laboratory, Pilot Plant or other FWQA Facilities

FWQA ORGANIZATION: Division of Facilities Management, Office of Administration

ENVIRONMENTAL ASSESSMENT TO BE PREPARED BY: Laboratory or Facility Director, in case of expansion or major improvement of established laboratory or pilot plant facilities; Headquarters program director in the case of planned facilities where no Laboratory or Facility Director has been designated.

GUIDELINES: An environmental assessment will be prepared reflecting the rationale of the site selection along with the need and justification for the facility. At Figure H-1 is a format suggesting an appropriate outline for the written presentation of the environmental assessment in accordance with the factors covered in Section 7 of the CEQ Interim Guidelines, Appendix A. The assessment will indicate what measures will be taken during construction to minimize harmful environmental effects such as erosion, and what facilities are planned for minimizing the environmental impact resulting from use of the facility (waste treatment, solid waste disposal, use of fuels, etc.). Additional guidance is found in the Departmental procedures on Environmental Quality, 516 DM 1-3.

PROVISION FOR STATE AND/OR LOCAL REVIEW: The environmental assessment will indicate the State and local government agencies consulted about the facility. Agencies should not be consulted or contacted without prior notification of, or coordination with, the Regional Director of the region in which the planned facility is to be located.

REVIEW BY OTHER FEDERAL AGENCIES: The official preparing the environmental assessment will determine on a case-by-case basis which Federal agencies should be consulted.

FWQA REVIEW CHANNELS: Primary responsibility for review and approval of the environmental assessment rests with the Assistant Commissioner(s) of the program(s) to be using the facility. Joint responsibility rests with the Assistant Commissioner for Administration. If these Assistant Commissioners, after reviewing the environmental assessment and any comments by local, State, or Federal agencies, determine that the facility location, construction and operation would have no significant or controversial impact on the environment, the environmental assessment and commentary are to be retained in FWQA.

If the Assistant Commissioners, after review of the environmental assessment and commentary by other agencies, determine that the facility will have a significant impact on the environment which cannot be avoided or is controversial, the following procedures are to be applied:

1. The official who prepared the environmental assessment will draft a formal Environmental Statement.

2. A copy of the draft Environmental Statement and any comments already received from other local, State, or Federal agencies will be forwarded through Headquarters policy review channels to the Office of the Secretary, DOI, in accordance with 516 DM 2.

3. Ten copies of the draft Environmental Statement and comments already received will be sent to the Council on Environmental Quality, along with a transmittal memorandum from the Assistant Commissioner for Administration indicating simply that the draft Statement is under review by the Department and listing agencies which have been asked to comment. CEQ procedures require that 10 copies of all comments received from other agencies should be sent to the Council upon receipt. Comments from Interior bureaus are not considered

to be "other agency" comments and thus are not subject to this requirement.

4. Review by other Federal agencies will be obtained in accordance with Section 8 of the CEQ Interim Guidelines. A review time of not less than 30 days is specified by CEQ. Determination of which agencies should review the Statement is to be made on a case-by-case basis. In some cases, it may be necessary to obtain further local and State views.

5. After receiving the views of commenting agencies, the program Assistant Commissioner(s) and the Assistant Commissioner for Administration, final responsibility for acting on the facility and submitting the final Environmental Statement to the Department rests with the Commissioner. The final Statement will represent a resolution of the issues insofar as possible.

6. Eleven copies of the final Statement and other agency comments, plus a copy of all comments received from Interior bureaus, are to be transmitted from FWQA to the Office of the Secretary for final action and transmittal to the Council on Environmental Quality. If significant environmental issues remain unresolved, the facility will not be approved until after the Department has acted favorably on the final Environmental Statement.

Environmental Assessment

FWOA Facility Construction

Project Identification

Name of Responsible Program Manager:

Address:

Facilities Identification:

Location of Project:

Brief Description of Project:

I. Probable impact of the project on environment:

- A. Location
- B. Operation (include details on inspection during construction)

II. Any probable adverse environmental effects which cannot be avoided:

III. Alternatives considered with evaluation of each:

IV. Relationship between local short-term uses of environment and maintenance and enhancement of long-term productivity

V. Any irreversible and irretrievable commitment of resources:

VI. Public objections to project, if any, and their resolution:

VII. Local agencies consulted about the project:

Figure H-1. Format for Environmental Assessment

federal register

FRIDAY, JUNE 9, 1972
WASHINGTON, D.C.

Volume 37 ■ Number 112

PART III

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934 •

APPENDIX E

ENVIRONMENTAL PROTECTION AGENCY

■

GENERAL GRANT REGULATIONS AND PROCEDURES; STATE AND LOCAL ASSISTANCE

■

Interim Regulations

Title 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency

SUBCHAPTER B—GRANTS

PART 30—GENERAL GRANT REGULATIONS AND PROCEDURES

PART 35—STATE AND LOCAL ASSISTANCE

Interim Regulations

Interim regulations are hereby promulgated to amend the Environmental Protection Agency general grant regulations (40 CFR Part 30) and to publish a new codification (40 CFR Part 35) of State and local assistance grant regulations supplementing the general grant regulations. Publication of these regulations is a continuation of an effort to coordinate and conform grant award and administration policies, procedures, and terms for the various EPA grant programs, to improve administration of these grant programs and to furnish applicants, grantees, and the public with a more explicit statement of grant award and administration requirements. Pending legislation, when enacted, will require revision of some portions of these regulations issued under the authority of the Federal Water Pollution Control Act. This codification is intended to provide a framework for development of future regulations.

Included within these regulations is a first amendment to the EPA interim general grant regulations (40 CFR Part 30) which were promulgated on November 27, 1971 (36 F.R. 22716) and became effective on January 1, 1972. This amendment, which does not substantially change the provisions of Part 30, consists of technical revisions, corrections of typographical errors, and clarifications found necessary to improve the administration of EPA grant programs.

In addition, a new Part 35 is promulgated which contains supplemental grant regulations for all EPA State and local assistance grants. All EPA grants to State and local public agencies (other than grants principally for research, demonstration projects, and training) awarded after the effective date of Part 35 shall be subject to these regulations. For the most part, these regulations constitute a more explicit statement of prior regulations or of previously uncodified policies, procedures, and terms of the respective grant programs. Most changes are attributable to the effort to coordinate and conform EPA grant policies and procedures.

The State and local assistance grant program regulations in effect at the time of recodification of EPA regulations into Title 40 of the Code of Federal Regulations on November 25, 1971, were removed from the Code of Federal Regulations (36 F.R. 22369). These regulations, which were maintained as uncodified regulations and will continue to remain in effect for State and local assistance grants awarded prior to July 1, 1972, to the extent such regulations are not inconsistent with the EPA general grant regulations (40 CFR Part 30), are:

Title 18, Part 601 (Jan. 1, 1971, ed., as amended at 36 F.R. 1467 to revise § 601.7, at 36 F.R. 8666 to revise § 601.22, at 36 F.R. 13029 to revise § 601.25(b), and at 36 F.R. 1467 to revise § 601.65(a)(9))—Grants for water pollution control.

Title 42, Part 456 (Jan. 1, 1971, ed.)—Grants for air pollution control programs.

Title 42, Part 460 (Jan. 1, 1971, ed., as amended at 36 F.R. 18622 to revise Part 460)—General Provisions Applicable to Grants under sections 204, 205, 207, 208, and 210 of the Solid Waste Disposal Act.

Title 42, Part 463 (added at 36 F.R. 18626)—Grants for Planning under section 207 of the Solid Waste Disposal Act.

However, the State and local assistance grant regulations promulgated hereby (40 CFR Part 35) may be made applicable to such grants awarded prior to July 1, 1972, in place of the above-mentioned uncodified regulations by explicit incorporation through grant amendment pursuant to 40 CFR 30.901.

All State and local assistance grants, including continuation grants (see 40 CFR 30.306), awarded on or after July 1, 1972, will be subject to the EPA general grant regulations (40 CFR Part 30) and to the appropriate subpart(s) of the supplemental grant regulations published herewith (40 CFR Part 35).

Interested parties and Government agencies are encouraged to submit written comments, views, or data concerning the regulations promulgated hereby to the Director, Grants Administration Division, Environmental Protection Agency, Washington, D.C. 20460. All such submissions received on or before September 29, 1972, will be considered prior to the promulgation of final EPA general or supplemental grant regulations. Suggestions for changes to the regulations promulgated in this subchapter are solicited on a continuous basis pursuant to 40 CFR 30.106.

Effective date. The amendments to Part 30 (Interim General Grant Regulations and Procedures) and the interim State and local assistance grant regulations and procedures of the new Part 35 promulgated hereby shall become effective on July 1, 1972. All Environmental Protection Agency grants awarded on or after July 1, 1972, shall be subject to the interim general grant regulations and procedures of 40 CFR Part 30, as hereby amended. All State and local assistance grants of the Environmental Protection Agency awarded on or after July 1, 1972, shall also be subject to the interim State and local assistance regulations and procedures of 40 CFR Part 35.

Dated: June 5, 1972.

ROBERT W. FRI,
Deputy Administrator.

Pursuant to the authorities cited in 40 CFR 30.101, Part 30 is amended as follows:

§ 30.102 [Amended]

Section 30.102. Delete the eighth word "will" in the first sentence.

§ 30.107 [Amended]

Section 30.107. Correct the room number in the Region II address from Room "847" to Room "908." Correct the ZIP Code for the Region VI office in Dallas, Tex., to "75201." Delete the address for the Region VII office and sustitute "Room 249, 1735 Baltimore Avenue, Kansas City, MO 64108."

§ 30.300–1 [Amended]

Section 30.300–1. Delete "the requirements of this regulation" from the first sentence and substitute "the application requirements of this Subchapter" and delete the last seven words in the first sentence "such forms as the Administrator shall prescribe" and substitute "EPA Form 5700-12."

§ 30.301–4 [Amended]

Section 30.301–4. Delete the reference to Catalog No. "66.301" and to the program identification "Solid Waste Planning Grants" from the listing under paragraph (a) and add as the second item in the listing under paragraph (b) a reference to Catalog No. "66.301" and to the program identification "Solid Waste Planning Grants". Applications for Solid Waste Planning Grants should now be addressed to the appropriate EPA Regional office, Grants Administration Branch.

§ 30.305 [Amended]

Section 30.305. Delete the tenth word "or" in the last sentence and substitute therefor "for".

§ 30.401 [Amended]

Section 30.401. In paragraph (c), delete the words "race, color, religion, sex, or national origin" and substitute therefor "race, color or national origin". In paragraph (g), delete the reference to the OMB circular at the end of the sentence, and substitute "OMB Circular No. A–95 (Rev. February 9, 1971, as revised through Transmittal Memorandum No. 2, March 8, 1972)." In paragraph (h), delete the references to the two OMB circulars at the end of the sentence and substitute "OMB Circular No. A–95 (Rev. February 9, 1971, as revised through Transmittal Memorandum No. 2, March 8, 1972) and OMB Circular No. A–95 (June 5, 1970).

§ 30.602 [Amended]

Section 30.602. Delete the first sentence and substitute the following as the new first sentence: "EPA grant funds shall be paid in advance or by way of reimbursement for allowable project costs, in the manner provided by this Subchapter and in the grant agreement."

§ 30.603 [Amended]

Section 30.603. Delete the matter in parentheses at the end of the second sentence and substitute "(in accordance with OMB Circular No. A-102)."

§ 30.901 [Amended]

Section 30.901. Delete the following words from the second sentence: "by the Project Manager on behalf of the Grantee" and substitute therefor "by an authorized representative of the Grantee".

§ 30.1000-1 [Amended]

Section 30.1000-1. Delete the sentence and substitute the following: "The Administrator of the Environmental Protection Agency, or his delegee. The term 'Regional Administrator' refers to the Regional Administrators of the 10 EPA regions, or their delegees".

Appendix A to Subchapter B—Delete the following words from General Grant Condition No. 8: "Executive Orders and".

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35.001 Purpose of regulation.
35.002 Applicability and scope.

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WATER POLLUTION CONTROL STATE AND INTERSTATE PROGRAM GRANTS

35.551 Definitions.
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35.551-2 Federal share.
35.551-3 Interstate agency.
35.551-4 Per capita income.
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35.845 Payments.
35.850 Reimbursement [Reserved].

AUTHORITY: The provisions of this Part 35 issued under the authorities cited in §§ 35.201, 35.301, 35.401 and 35.801.

§ 35.001 Purpose of regulation.

This part establishes and codifies policies and procedures governing the award of State and local assistance grants by the Environmental Protection Agency.

§ 35.002 Applicability and scope.

This part establishes mandatory policies and procedures for all EPA State and local assistance grants. The provisions of this part supplement the EPA general grant regulations and procedures (40 CFR Part 30). Accordingly, all EPA State and local assistance grants are awarded subject to the EPA interim general grant regulations and procedures (40 CFR Part 30) and to the applicable provisions of this Part 35.

Subpart A—Planning Grants

WATER POLLUTION CONTROL PLANNING REQUIREMENTS

§ 35.150 Applicability.

The requirements of basin control and regional and metropolitan plans apply to:

(a) Water pollution control comprehensive basin plans pursuant to § 35.225;

(b) Basinwide plans and regional and metropolitan plans as required by §§ 35.835-2 and 35.835-3 of Subpart C for waste water treatment works construction grants.

§ 35.150-1 Basin control plans.

Any basinwide plan for the control or abatement of water pollution must adequately take into account all, or such as may be appropriate, of the following:

(a) *Sources of pollution.* An identification list of all significant point sources of waste discharges (municipal, industrial, agricultural, and others) and of all significant nonpoint sources of water quality degradation.

(b) *Volume of discharge.* The average daily volume of discharge produced by each waste discharger. Cooling water, or cooling water which is contaminated by industrial waste or sewage shall be reported separately. Storm water and mixed storm water and sewage shall be identified and reported separately in terms of frequency-volume relationships.

(c) *Character of effluent.* The major characteristics of each such waste discharge together with a measurement of their relative strength or concentrations including but not limited to:

BOD 5	mg./l.
COD	mg./l.
Color	Platinum cobalt scale.
Turbidity	Jackson candle scale.
Solids	mg./l.
Toxic substances	
Metal ions	mg./l.
Fluorides	mg./l.
Dissolved substances	p.p.m.
Temperature	c.
pH	
Radioactivity	pCi/l.
Chlorides	mg./l.
Nutrients	mg./l.

(d) *Present treatment.* A brief description of the type of treatment being given by each discharger, together with a statement of the degree of treatment currently being achieved.

(e) *Water quality effect.* A brief description of the effect of discharges and abatement practices upon the quality of the water in the basin, and the anticipated effectiveness of the projects or activities proposed to improve the quality of the water.

(f) *Detailed abatement program.* Identify all waste discharges for which present treatment is less than required by approved water quality standards, or which will degrade water quality below standards. For each such discharge so identified, furnish an abatement schedule containing the following:

(1) Level of treatment to be required expressed in percentage of reduction of BOD and/or any other significant parameters required pursuant to applicable Federal, State, and interstate laws, regulations, and orders.

(2) Volume of flow for which waste treatment facilities will be designed.

(3) Estimated completion dates for preliminary plans, for final design, for construction, and for operation of waste treatment facilities.

(4) Estimated cost of design and construction if available.

(5) Identification of agencies or entities responsible for abatement actions or implementation of the recommended abatement program with respect to each such discharge.

§ 35.150–2 Regional and metropolitan plans.

Any regional or metropolitan plan for the prevention, control, or abatement of water pollution must adequately take into account:

(a) Anticipated growth of population and economic activity with reference to time and location.

(b) Present and future use and value of the waters within the planning area for domestic water supplies, propagation of fish and wildlife, recreational purposes, agricultural, industrial, and other legitimate uses.

(c) Adequacy of the waste collection systems in the planning area with reference to operation, maintenance, and expansion of such systems.

(d) Combination or integration of waste treatment facilities into a waste treatment system so as to achieve efficiency and economy of such treatment.

(e)Practicality and feasibility of treating domestic and industrial waste in a combined waste treatment facility or integrated waste treatment system.

(f) Need for and capacity to deal with waste from sewers which carry storm water or both storm water and sewage or other wastes.

(g) Waste discharges presently in, or anticipated for the planning area.

(h) Effect of proposed waste treatment facilities upon the quality of the water within the planning area with reference to other waste discharges and to applicable water quality standards.

(i) Institutional arrangements necessary to implement the plan.

WATER QUALITY MANAGEMENT PLANNING GRANTS

§ 35.200 Purpose.

These provisions establish and codify policies and procedures for grants to planning agencies for the development of comprehensive water pollution control and abatement plans for basins. These provisions supplement the EPA general grant regulations (40 CFR Part 30).

§ 35.201 Authority.

These provisions for water quality planning grants are issued under section 3(c) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1153(c).

§ 35.202 Definitions.

As used herein, the following words and terms shall have the meaning set forth below:

§ 35.202–1 Administrative expenses.

Approved allowable costs incurred for the development of a water pollution control comprehensive basin plan pursuant to § 35.225.

§ 35.202–2 Basin.

A planning area. A basin includes, but is not limited to, rivers and their tributaries, streams, coastal waters, sounds, estuaries, bays, lakes, and portions thereof as well as lands drained thereby, and discrete deposits of subsurface water.

§ 35.202–3 State.

A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

§ 35.205–4 Grant limitations.

Water quality management planning grants shall be subject to the following limitations:

(a) No grant may exceed 50 per centum of the administrative expenses of the planning agency.

(b) No project period may exceed 3 years, beginning with the project commencement date approved at the time of initial grant award.

§ 35.210 Eligibility.

To be eligible for a water quality management planning grant, a planning agency must:

(a) Be designated by the Governor of the State or (where the basin includes portions of more than one State) by the majority of Governors of the States, as the agency having primary responsibility for water quality planning in the basin.

(b) Be an entity of government legally constituted or authorized under the laws of the State or States in which the basin for which it has planning responsibility is located.

§ 35.215 Application requirements.

An application for a water quality management planning grant shall be submitted in accordance with 40 CFR 30.301 through 30.301–5 to the appropriate Regional Administrator and shall:

(a) Include a letter from the Governor or, when more than one State is involved, the majority of Governors of the States, designating the applicant as the planning agency having primary responsibility for water quality planning in the basin.

(b) Include a work plan which contains the following information:

(1) Explanation of the need for the planning study.

(2) Description of the objectives and scope of the study.

(3) Background information on the basin and the water pollution problem in the basin.

(4) Description of the manner in which the planning study will be conducted and the methodology to be used.

(5) Description of the action to be taken by agencies other than the applicant participating in the study.

(6) Schedule of work to be accomplished.

(7) Detailed cost and resource budget.

(8) Identification of anticipated subagreements.

(c) Indicate the applicant's capability, including all necessary resources, powers, authority, and jurisdiction to develop a water pollution control comprehensive basin plan.

(d) Provide for the continuing participation of public and private State, interstate, local, and (where appropriate) international officials and interests in the basin throughout the planning process.

(e) Give assurance that the planning program will develop recommendations for maintaining and improving water quality standards in the basin in accordance with the requirements of the Federal Water Pollution Control Act.

§ 35.220 Criteria for award.

In determining the desirability and extent of funding for a project and relative merit of an application, consideration will be given to the following criteria:

(a) The severity of the water pollution problem in the basin and the extent to which the proposed planning will contribute to its control;

(b) The population affected by the water pollution problem in the basin and the per capita cost of the proposed planning;

(c) Whether the proposed planning will provide the opportunity to make substantial advances in the comprehensive, basinwide management of pollution control;

(d) The extent of the need in the basin for more detailed plans or coordinated programs, including financial and other institutional arrangements to complement or carry out comprehensive basin planning; and

(e) The existence and extent of support by public and private interests in the basin for water pollution control planning and implementation.

§ 35.225 Water pollution control comprehensive basin plan.

Each planning agency receiving a water quality management planning grant shall develop and submit to the Regional Administrator within the approved project period, a water pollution control comprehensive basin plan which:

(a) Is consistent with applicable Federal and State water quality standards and objectives;

(b) Recommends such treatment works and sewer systems as will provide the most effective and economical means of collection, storage, treatment, and purification of wastes and recommends means to encourage both municipal and industrial use of such works and systems;

(c) Recommends methods of adequately financing those facilities as may be necessary to implement the plan;

(d) Provides for continuing participation of public and private, State, interstate, local, and (where appropriate) international interests in water quality management planning in the basin; and

(e) Meets the requirements for water pollution control planning set forth in § 35.150.

(f) Recommends administrative and organization systems and procedures necessary to implement the plan.

§ 35.230 Reports.

§ 35.230–1 Report of project expenditures.

No later than 90 days following the end of each budget period, the grantee planning agency shall submit to the Regional Administrator a report of project expenditures.

§ 35.230–2 Interim plan.

The grant agreement may require the submission of an interim water pollution control comprehensive basin plan prior to the end of the project period.

§ 35.240 Continuation grant.

To be eligible for a continuation grant for a second or third budget period within the approved project period, the grantee planning agency must:

(a) Having demonstrated satisfactory performance during all previous budget periods; and

(b) Submit no later than 30 days prior to the end of the budget period a continuation application which includes a detailed progress report, an estimated financial statement for the current budget period, a budget for the new budget period, and an updated work plan revised to account for actual progress accomplished during the current budget period.

SOLID WASTE PLANNING GRANTS

§ 35.300 Purpose.

These provisions establish and codify policies and procedures for grants for solid waste planning projects. These provisions supplement the EPA general grant regulations (40 CFR Part 30).

§ 35.301 Authority.

These provisions for solid waste planning grants are issued under section 207 of the Solid Waste Disposal Act as amended, 42 U.S.C. 3254a.

§ 35.302 Definitions.

As used herein, the following words and terms shall have the meaning set forth below:

§ 35.302–1 Intermunicipal agency.

An agency established by two or more municipalities with responsibility for planning or administration of solid waste disposal.

§ 35.302–2 Interstate agency.

An agency of two or more municipalities in different States, or an agency established by two or more States, with authority to provide for the disposal of solid wastes and serving two or more municipalities located in different States.

§ 35.302–3 Municipality.

A city, town, borough, county, parish, district, or other public body created by or pursuant to State law with responsibility for the planning or administration of solid waste disposal, or an Indian tribe.

§ 35.302–4 Solid waste.

Garbage, refuse, and other discarded solid materials, including solid waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows or other common water pollutants.

§ 35.302–5 Solid waste disposal.

The collection, storage, treatment, utilization, processing, or final disposal of solid waste.

§ 35.302–6 State.

A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

§ 35.304 Solid waste planning projects.

Solid waste planning grants may be awarded for either or both:

§ 35.304–1 Management planning.

Management planning concentrates on alternative institutional arrangements for regulating, operating, and financing an environmentally sound solid waste management system. Examples of management planning include:

(a) Local and regional planning which results in the implementation of a self-financed solid waste agency which will adequately protect the environment.

(b) Local and regional planning which results in the establishment of a solid waste regulatory authority which may then operate or franchise for collection, processing, or disposal of solid waste in an environmentally sound manner.

(c) State planning to develop a comprehensive State Solid Waste Management Plan which results in State actions to enable regional or local units to finance and manage waste systems efficiently and in a manner protective of the environment, and recommends alternative State regulatory, financial assistance, and technical assistance roles with local units.

§ 35.304–2 Special purpose planning.

Special purpose planning concentrates on how specific components of a solid waste management system can be developed or improved. Examples of special purpose planning include:

(a) Local and regional planning which results in closing open dumps and implementing a new sanitary landfill, and is consistent with any applicable comprehensive solid waste management plan.

(b) Local and regional planning which results in improved collection service and is consistent with any applicable comprehensive solid waste management plan.

(c) State planning which results in the handling and processing of abandoned or discarded motor vehicles in an environmentally sound manner.

(d) State planning which results in a strategy and methodology for enforcing existing State bans on poor solid waste management practices, e.g., open dumping.

§ 35.305 Grant limitations.

Solid waste planning grants shall be subject to the following limitations:

(a) No grant may exceed 75 percent of the allowable cost of a project pertaining to an area which includes more than one municipality.

(b) No grant may exceed 66⅔ percent of the allowable cost of a project pertaining to an area which includes only one municipality.

(c) No project period may exceed 2 years, beginning with the project commencement date approved at the time of initial grant award.

§ 35.310 Eligibility.

To be eligible for a solid waste planning grant, an applicant must:

(a) Be a State, interstate, municipal, intermunicipal agency, or organization composed of public officials which is eligible for assistance under section 701(g) of the Housing Act of 1954 (40 U.S.C. 461(g)); or

(b) Have been designated as the sole agency responsible for carrying out the purposes of section 207 of the Solid Waste Disposal Act for the area involved. Designation of State agencies is by the Governor: *Provided*, That local and regional applicants, may be designated by the State solid waste management agency designated by the Governor.

§ 35.315 Application.

§ 35.315-1 Preapplication procedures.

(a) An informal preapplication should be submitted to the appropriate Regional Administrator prior to formal application.

(b) Such preapplication may be in letter form, must be brief (less than five pages) and should generally include:

(1) A description of the applicant agency and its jurisdictions;

(2) The proportion of the project devoted to management planning or special purpose planning;

(3) The objectives of the project;

(4) A brief description of the ability to meet mandatory criteria, the evaluative criteria, and the legal requirements.

(5) Estimated total costs, schedule of the project, expected outputs, and requested Federal share.

(c) Preapplications will be reviewed by the EPA Regional Office within 30 days of receipt to determine eligibility and general technical merit.

(d) Preapplications should be developed in consultation with State solid waste agencies and local agencies to be affected by the project.

§ 35.315-2 Application requirements.

An application for a solid waste planning grant shall be submitted in accordance with 40 CFR 30.301 through 30.301-5 to the appropriate Regional Administrator and shall:

(a) Include a letter from the Governor or State solid waste management agency designating the applicant as the sole agency responsible for carrying out the purposes of section 207 of the Solid Waste Disposal Act for the area involved.

(b) Include a work plan which contains the following information:

(1) Explanation and scheduling of the tasks to be performed.

(2) Identification of which unit will perform each task.

(3) Estimation of the costs per task.

(4) Identification of all subagreements.

(c) Identify the steps necessary to implement the recommendations of the plan.

(d) Indicate provision for active involvement of local officials, key managers of publicly and privately owned solid waste agencies and other affected agencies (e.g., public works departments, sanitation districts, existing utilities, etc.), local officials, and the general public during the entire planning process.

(e) Provide for the assignment of a full-time, qualified project director and other appropriate staff to the project. A part-time project director may be adequate for small rural projects.

(f) Schedule conformance to State and local regulations governing solid waste management, e.g., bans on open dumping. Where regulations or ordinances do not exist, assurance must be given that action taken under the grant will contribute to the elimination of offensive practices harmful to the environment.

(g) Assure that the planning of solid waste disposal will be coordinated, with and not duplicate other related State, interstate, regional, and local planning activities, including those financed in part with funds pursuant to section 701 of the Housing Act of 1954 (40 U.S.C. 461).

§ 35.320 Criteria for award.

In determining the desirability and extent of funding for a project and priority of an application, the Regional Administrator will consider the following criteria:

§ 35.320-1 All applications.

(a) Priority will be given to management planning projects over special purpose planning projects.

(b) All other factors being equal, priority will be given to applicants supplying a greater proportion of non-Federal funding support over those supplying the minimum required non-Federal support.

(c) Priority will be given to applications which show that data collection is carefully limited to the purposes of the plan over those which have excessive date collection tasks.

(d) Priority will be given to applications according to the level of progress of their respective State solid waste management plans (e.g., progressing satisfactorily, completed and accepted by EPA, adopted by the Governor).

(e) Priority will be given to plans to be developed primarily by the applicant's staff over projects relying heavily on contractual outside services.

§ 35.320-2 State applications.

The following additional criteria will apply to State applications:

(a) *For management planning projects.* (1) Priority will generally be given to applications which illustrate an awareness of the management and financing options which could be utilized at the State, local, and regional levels.

(b) *For special purpose planning projects.* (1) Priority will be given to States which have completed, adopted, and implemented a solid waste management plan accepted by EPA.

(2) Priority will be given to applicants who exhibit a high level of understanding of the problems to be addressed.

§ 35.320-3 Local and regional applications.

The following additional criteria will apply to local and regional applications:

(a) Highest priority will be given to applicants who can implement positive improvements in solid waste management.

(b) Priority will be given to areawide planning, that is, planning for an area which is economically, socially, geographically, and environmentally related and which is appropriate for purposes of a solid waste planning project.

(c) If the applicant cannot directly implement recommendations of the plan.

(1) Priority among management planning projects will be given to applicants who have the following capabilities.

(i) *Organizational capabilities.* State and local ordinances which allow alternative approaches to solid waste management (e.g., regional solid waste regulatory authority, solid waste public or private utility, publicly owned and operated system).

(ii) *Financing capabilities.* State and local ordinances which regulate solid waste management functions, such as incineration, land disposal, and collection.

(2) Priority among special purpose planning projects will be given to applicants who have:

(i) Shown that the special purpose planning is coordinated with a completed solid waste management plan.

(ii) Shown why special purpose planning is appropriate, if a comprehensive solid waste management plan has not been developed.

§ 35.330 Reports.

§ 35.330-1 Progress reports.

The grant agreement may require the submission of a brief (less than five pages) progress report after the end of each quarter of the budget period. This progress report must show in chart or in a narrative format the progress achieved on each task in relation to the approved schedule and project milestones. Special problems and delays should be explained. The more detailed progress report included with applications for continuation grants may be used in lieu of a third-quarter report for projects having 1-year budget periods.

§ 35.330-2 Report of project expenditures.

No later than 90 days following the end of each budget period, the grantee planning agency shall submit to the Regional Administrator a report of project expenditures.

§ 35.330-3 Final report.

The grantee shall submit a final report for approval prior to the end of the approved project period. The report shall document project activities over the entire period of grant support and shall present in complete detail all technical aspects, negative and positive, toward the achievement of the stated purposes and objectives, and shall include the plan developed for solution of the solid waste management problems. The plan shall be based upon the project findings, data analyses, and conclusions, and shall include specific recommendations for action and implementation. The final report shall reflect or include EPA comment. One set of reproducible copy suitable for printing and such other copies as may be stipulated in the grant agreement shall be promptly transmitted to the Regional Administrator.

§ 35.340 Continuation grant.

To be eligible for a continuation grant within the approved project period, the grantee planning agency must:

(a) Have demonstrated satisfactory performance during all previous budget periods; and

(b) Submit no later than 30 days prior to the end of the budget period a continuation application which includes a detailed progress report, an estimated financial statement for the current budget period, a budget for the new budget period, and an updated work plan revised to account for actual progress accomplished during the current budget period.

Subpart B—Program Grants

§ 35.400 Purpose.

This subpart, which establishes and codifies policy and procedures for air and water pollution control program assistance grants, supplements the EPA general grant regulations and procedures (40 CFR Part 30) and is applicable to all program grants. These grants are intended to aid programs for the prevention and control of air or water pollution at the State, interstate, or local level.

§ 35.400-1 Grants may be awarded to air pollution control agencies and interstate planning agencies.

Grants may be awarded to air pollution control agencies for the planning, development, establishment, improvement, and maintenance of programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards. Grants may be awarded to interstate planning agencies for the development of implementation plans for any interstate air quality control region.

§ 35.400-2 Grants may be awarded to State and interstate water pollution control agencies.

Grants may be awarded to State and interstate water pollution control agencies for the establishment and maintenance of adequate programs for the prevention and control of water pollution, including the training of personnel of public agencies.

§ 35.401 Authority.

This subpart is issued under sections 105 and 106 of the Clean Air Act, as amended, 42 U.S.C. 1857c and 1857c-1, and section 7 of the Federal Water Pollution Control Act as amended, 33 U.S.C. 1157.

§ 35.405 Criteria for evaluation of program objectives.

(a) Program descriptions or plans set out in the application and submitted in accordance with these regulations shall be evaluated to determine:

(1) Consistency and compatibility of goals and expected results with national and regional programs in implementing purposes and policies of the Clean Air Act or the Federal Water Pollution Control Act, as amended.

(2) Feasibility of achieving goals and expected results in relation to existing problems, program authority, organization, resources, and procedures.

(b) Approval of the program description or plan developed pursuant to § 35.525 or § 35.575 will be based on the extent to which the applicant's program satisfies the above criteria.

§ 35.410 Evaluation of program performance.

(a) An annual program performance evaluation shall be conducted by the appropriate Regional Administrator and the grantee to provide a basis for measuring progress toward achievement of the approved program objectives described in the program description or plan. The evaluation shall be limited to the objectives, responsibilities, authorized functions, and other related activities set forth in the grantee's approved program plan or description.

(b) The Regional Administrator shall complete the program evaluation no later than 120 days before the beginning of a new budget period. The Regional Administrator shall prepare a summary of the joint evaluation findings. The grantee shall be allowed 15 days to concur or comment on the findings.

§ 35.415 Report of project expenditures.

Within 90 days after the end of each budget period, the grantee shall submit to the Regional Administrator an annual report of expenditures, which shall include all funds, Federal and non-Federal, expended during the budget period.

§ 35.420 Payment.

Grant payments shall be made quarterly in advance. Grant payments shall be made on a cumulative basis not to exceed 30 percent of the grant amount for the first quarter, 30 percent for the second quarter, 20 percent for the third quarter, and 20 percent for the fourth quarter of the budget period. No payment shall be made prior to grant award.

AIR POLLUTION CONTROL PROGRAM GRANTS

§ 35.501 Definitions.

As used herein, the following words and terms shall have the meaning set forth below:

§ 35.501-1 Air pollution.

The presence in the outdoor atmosphere of any dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or a combination thereof, in sufficient quantities and of such characteristics and duration as to be, or likely to be, injurious to health or welfare, animal or plant life, or property, or as to interfere with the enjoyment of life or property.

§ 35.501-2 Air pollution control agency.

Any of the following:

(a) *State air pollution control agency.* A single State agency designated by the Governor of that State as the State agency with substantial responsibility for the prevention and control of air pollution within the State;

(b) *Interstate air pollution control agency.* An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution;

(c) *Municipal air pollution control agency.* A city, county, or other local government agency responsible for enforcing ordinances or laws relating to the prevention and control of air pollution.

(d) *Intermunicipal air pollution control agency.* An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

§ 35.501-3 Air pollution control program.

A program for the prevention and control of air pollution or the implementation, maintenance, and enforcement of national primary and secondary ambient air quality standards.

§ 35.501-4 Air quality control region.

An area designated or established pursuant to section 107 of the Clean Air Act, 42 U.S.C. 1857c-2.

§ 35.501-5 Implementation plan.

The implementation plan, or revision thereof, which has been approved under section 110(a) of the Clean Air Act (42 U.S.C. 1857c-5(a)), and which implements a national primary or secondary ambient air quality standard in a State or portion thereof.

§ 35.501-6 Interstate air quality control region.

A geographic area, designated under section 107 of the Clean Air Act, that includes areas in two or more States.

§ 35.501-7 Interstate planning agency.

An agency legally constituted under the laws of two or more States having all powers necessary to carry out a planning project in accordance with section 106 of the Clean Air Act, and designated by the Governor of each State as the official air pollution control planning agency for the area of jurisdiction within such State covered by the project.

§ 35.501-8 Maintenance program.

A program of an air pollution control agency that as a minimum has attained the level of operation set forth in § 35.525-2.

§ 35.501-9 Municipality.

A city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

§ 35.501-10 Nonrecurrent expenditures.

Expenditures which include:

(a) The amount by which the annual cost of the purchases of individual items of equipment, each costing over $2,500, exceed the average of such purchases for the 3 preceding fiscal years. Nonrecurrent equipment purchases may be depreciated over the anticipated useful life of the equipment.

(b) Costs of projects supported under grants authorized by sections of the Clean Air Act other than section 105.

§ 35.501-11 Premaintenance program.

An undertaking to plan, develop, establish, or improve an air pollution control program having comprehensive objectives and schedules for growth and which will qualify the undertaking as a maintenance program at the end of the project period.

§ 35.501-12 Program description.

A comprehensive narrative statement of objectives for the prevention and control of air pollution; for the implementation, maintenance, and enforcement of national primary and secondary ambient air quality standards or for the development of an implementation plan; and of the proposed measures to achieve these objectives.

§ 35.501-13 State.

A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

§ 35.505 Allocation of funds.

(a) *Tentative allowances.* No later than April 1 of each year, the Administrator will issue to each Regional Administrator a tentative regional allowance for the next fiscal year. This tentative allowance (planning target) will be based on the amount of the appropriation requested for the next fiscal year. The Regional Administrator shall promptly notify each State agency of the tentative allotment for the State for the next fiscal year.

(b) *Final allowances.* As soon as practicable, after funds are made available, the Administrator will issue to each Regional Administrator a final regional allowance for State allotment of the funds appropriated for each fiscal year.

(c) *Determination.* Regional allowances and State allotments shall be the sum of the amounts required to support State and local programs which meet the requirements of § 35.525 and shall, so far as practicable, be determined by (1) the population served by a program, (2) the extent of the actual or potential air pollution problem within a program's area of jurisdiction, (3) the financial need of the applicant, and (4) the impact of the program's activities upon national priorities and objectives existing at the time. The allotment for any one State may not exceed an amount equal to 10 percent of the funds appropriated for the purposes of section 105(a) of the Clean Air Act in any one fiscal year.

(d) *Reallotment.* By October 15 of each year, or as soon thereafter as practicable, the Administrator will issue to each Regional Administrator an allowance derived from reallotment of prior year funds.

§ 35.507 Federal assistance for agency programs.

§ 35.507-1 Limitations on assistance.

(a) *Control programs.* Subject to the availability of funds, the criteria contained in § 35.520, and in accordance with the schedule of Federal support (§ 35.507-3), the Regional Administrator may award a grant for:

(1) *Premaintenance programs.* (i) Up to two-thirds of the allowable costs for any air pollution control agency (see § 30.701 of this chapter).

(ii) Up to three-fourths of the allowable costs for any air pollution control agency as defined in § 35.501-2 (a), (b), and (d).

(2) *Maintenance programs.* (i) Up to one-half of the allowable costs for any air pollution control agency.

(ii) Up to three-fifths of the allowable costs for any air pollution control agency as defined in § 35.501-2 (a), (b), and (d).

(b) *Interstate planning.* Subject to the availability of funds, and the criteria contained in § 35.520-2, the Regional Administrator may award a grant to an interstate planning agency as defined in § 35.501-8 in an amount up to 95 percent of the estimated air quality planning program costs for an initial 2-year period. Thereafter, the Regional Administrator is authorized to support such interstate planning agencies in an amount up to three-fourths of the estimated air quality planning program costs.

§ 35.507-2 Limitations on duration.

(a) *Project period*—(1) *Premaintenance programs.* The project period for premaintenance programs shall be a period of time expressed in years that is mutually agreeable to the Regional Administrator and the control agency, but shall not exceed 6 years. The project period shall be based on the program goals identified in the program description of the initial premaintenance grant application. The Regional Administrator may extend the project period once for a period of 1 year. Subsequently, no further Federal support will be available to the control agency at the premaintenance program level.

(2) *Maintenance programs.* The project period for maintenance programs shall be unlimited provided that such programs continue at a maintenance level. Federal support may be suspended or terminated if a maintenance program ceases to qualify under § 35.525-2.

(3) *Interstate planning.* The project period for interstate planning shall be a period of time expressed in years that is mutually agreeable to the Regional Administrator and the interstate agency, but shall not exceed 3 years. The project period shall be based on the program goals identified in the program description of the planning grant application. The Regional Administrator may extend the project period once for a period of 1 year.

(b) *Budget periods.* The budget period of any grant awarded to support a premaintenance or maintenance program or an interstate planning agency shall be for a period of 12 months and shall be coterminous with the grantee agency's fiscal year.

§ 35.507-3 Schedule of Federal support.

Type agency	Year of support [1]	Maximum federal funds [2]
		(*Percent*)
Municipal [3] (§ 35.507-1(a)(1)(i)).[6]	1	100
	2	75
	3	50
	4	25
	All over 4	0
State, intermunicipal and interstate [3] (§35.507-1(a)(1)(ii)).[6]	1	200
	2	150
	3	100
	4	50
	All over 4	0
Municipal [4] (§ 35.507-1(a)(1)(i)).[6]	1	200
	2	200
	3	150
	4	100
	5	75
	6	50
	[5] 7	[5] 25
State, intermunicipal and interstate [4] (§35.507-1(a)(1)(ii)).[6]	1	300
	2	300
	3	250
	4	200
	5	150
	6	100
	[5] 7	[5] 50
Municipal (§35.507-1(a)(2)(i)).[7]	All	100
State, intermunicipal and interstate (§35.507-1(a)(2)(ii)).[7]	All	150

[1] Year of support starting May 1, 1972, or later.

[2] Expressed as a percent of local funds.

[3] For agencies which have received Federal support, under section 105 of the Act, for three or more complete budget periods between July 1, 1968, and June 30, 1972.

[4] For agencies which have received Federal support under section 105 of the Act, for less than three complete budget periods between July 1, 1968, and June 30, 1972.

[5] Provided 1 year extension is granted by the Regional Administrator.

[6] Premaintenance type support.

[7] Maintenance type support.

§ 35.510 Grant amount.

§ 35.510-1 Determination.

(a) *Control agencies.* In determining the amount of support for a control agency, the Regional Administrator will consider: (1) The functions, duties, and obligations assigned to the program by any applicable implementation plan; (2) the feasibility of the program in view of the resources to be made available to maintain a total program effort; (3) the probable or estimated total cost of the program in relation to its expected accomplishments; (4) the extent of the actual or potential pollution problem; and (5) the population served within the agency's jurisdiction.

(b) *Interstate planning agencies.* In determining the amount of support for an interstate planning agency, the Regional Administrator will, pursuant to section 106 of the Act, consider the extent of the actual or potential air pollution problem in relation to: (1) The need to revise applicable implementation plans, or portions thereof, to insure the timely achievement of national primary or secondary ambient air quality standards; (2) the development of new implementation plans; and he will also consider (3) the comments of the appropriate governmental officials; (4) the feasibility of the project with regard to the resources available; and (5) the estimated cost of the project compared to its probable accomplishments.

§ 35.510–2 Limitations.

(a) The amount of a grant award to support an air pollution control agency premaintenance or maintenance program shall be subject to the grant limits set forth in § 35.507–1 in accordance with the schedule of Federal support in § 35.507–3.

(b) Whenever a final allowance is not sufficient to meet the funding requirements of qualified air pollution control agencies, the Regional Administrator shall give priority to continuation support.

(c) Whenever funds available are insufficient to continue support for programs entitled to priority, an agency shall be consulted prior to any reduction in the amount of Federal support.

(d) Grants shall be awarded only from appropriations available at the time of award.

§ 35.515 Eligibility.

§ 35.515–1 Control programs.

Any air pollution control agency that meets the criteria for award prescribed in § 35.520–1 shall be eligible for an air pollution control program assistance grant.

§ 35.515–2 Interstate planning.

Any interstate planning agency that meets the criteria for award prescribed in § 35.520–2 shall be eligible for an air quality program planning grant authorized by section 106 of the Clean Air Act.

§ 35.520 Criteria for award.

§ 35.520–1 Control programs.

(a) No grant may be awarded unless the grant application includes a program description which meets the requirements of § 35.525 and which has been approved by the Regional Administrator.

(b) No grant may be awarded until the Regional Administrator has consulted with the official designated by the Governor or Governors of the State or States affected by such award pursuant to section 105(b) of the Clean Air Act. Such consultation should consider the role of the applicant in the enforcement of any applicable implementation plan and confirm that the project will be consistent with the objectives of the State air pollution control program.

(c) No grant may be awarded during any fiscal year when the estimated recurrent expenditures of non-Federal funds for the program will be less than the recurrent expenditures of non-Federal funds were for such programs during the preceding fiscal year.

(d) No grant may be awarded unless the applicant provides assurance satisfactory to the Regional Administrator that such grant will be used to supplement and, to the extent practicable, increase the State, local, or other non-Federal funds that would in the absence of such grant be made available for such program, and that Federal assistance will in no event supplant such State, local, or other non-Federal funds.

(e) Not more than 10 percent of the total of funds appropriated or allocated for the purposes of section 105(a) of the Clean Air Act in any one fiscal year shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Regional Administrator shall determine the portion of such grant that is chargeable to the 10 percent limitation for each State into which such area extends.

(f) No grant may be awarded under § 35.507–1(a) (1)(ii) and (2)(ii) with respect to any air quality control region, or portion thereof, for which there is an applicable implementation plan, unless the air pollution control agency applicant has substantial responsibility for carrying out such applicable implementation plan. "Substantial responsibility" shall include, but not be limited to, adequate legal authority and resource capability for carrying out the effort required to implement and meet the goals of an approved implementation plan in an agency's geographic area of jurisdiction independently or in concert with other air pollution control agencies.

(g) No grant may be awarded to any interstate or intermunicipal air pollution control agency unless the applicant provides assurance satisfactory to the Regional Administrator in the grant application narrative description that the agency provides for adequate representation of appropriate State, interstate, local, and (when appropriate) international interests in the air quality control region and further that the agency has the capability of developing and implementing a comprehensive air quality plan for the air quality control region. Such a plan shall include (when found appropriate by the Regional Administrator) a recommended system of alerts to avert and reduce the risk of situations in which there may be imminent and serious danger to the public health or welfare from air pollutants and the various aspects relevant to the establishment of air quality standards for such air quality control region, including the concentration of industries, other commercial establishments, population and naturally occurring factors which shall affect such standards.

§ 35.520–2 Interstate planning.

No grant may be awarded pursuant to 35.507–1(b) unless such agency is designated by the Governors of the affected States, is capable of recommending to the Governors plans for implementation of national primary and secondary ambient air quality standards and includes representation from the States and appropriate political subdivisions within the affected interstate air quality control regions.

§ 35.525 Program requirements.

Portions of the program description may incorporate by reference appropriate parts of an applicable implementation plan.

§ 35.525–1 Premaintenance program.

A program description for an air pollution control agency premaintenance program shall include, but not be limited to, the following:

(a) A description of the extent of the air pollution problem within the applicant's geographical area of jurisdiction.

(b) A comprehensive statement of applicant's objectives for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards, and of the proposed means to achieve these objectives.

(c) A description of the applicant's existing program and of the changes that are to be initiated during the project period, including but not limited to those procedures necessary to develop or execute any applicable implementation plan. Items that should be specifically included as part of the comprehensive description are:

(1) A description of the pertinent existing legal authority including applicable statutes, ordinances, rules, and regulations.

(2) A description of proposed, pending, or requested changes to the existing legal authority.

(3) A description of the organization, methodology, and resources utilized in the program. Resources should include administrative and technical support, personnel, facilities, equipment, staff, and other pertinent resources; and of any additional resources required to meet the program objectives or execute any applicable implementation plan.

(4) A description of any intergovernmental agreements and/or working relationships for carrying out programs.

(d) Regulations for the prevention and control of air pollution which are at least as stringent as those contained within any applicable implementation plan covering sources under the jurisdiction of the applicant agency.

(e) Provisions for visible emission limitations adequate for the prevention and control of particulate matter from all sources over which the applicant has jurisdiction and provide adequate measures for the prevention and control of open burning within the geographic area of the applicant's jurisdiction.

(f) A certification by the official responsible for application preparation that the program description as submitted has been officially adopted by that program.

(g) If no applicable implementation plan exists, the program description must have been determined by the appropriate official designated by the Governor of the State, to be designed to prevent, and control air pollution within the geographic area of responsibility of the applicant in a manner consistent with the program of the State air pollution control Agency.

(h) If there exists an applicable implementation plan for any air quality control region within which the program's geographical area of jurisdiction is partially or totally located, the program description must be designed to prevent and control air pollution within the geographical area and scope of responsibility of such applicant in a manner consistent with such applicable implementation plan.

§ 35.525–2 Maintenance program.

A program description of an air pollution control agency maintenance program shall satisfy the requirements of § 35.525–1 and shall meet the following additional requirements, either alone or in cooperation with other agencies within its geographic area of jurisdiction. The program must:

(a) Provide a description of the organization, program support activities and staffing skills that are consistent with stated objectives, environmental needs and solutions.

(b) Employ at least 75 percent of estimated total staff needs as determined by an Environmental Protection Agency manpower model, comparable task analysis procedures or other means acceptable to the Regional Administrator.

(c) Provide training for development and upgrading of employee skills consistent with maintenance program requirements.

(d) Provide for public education and information that is designed to maintain public confidence and support of the air pollution control program.

(e) Maintain legal authority and regulations to prevent, abate, and control air pollution from all sources within the applicant's area of jurisdiction which are not subject to exclusive control by other agencies.

(f) Provide procedures for conducting area surveillance source inspections and enforcement activities on a 24-hour basis. This shall include a system involving official forms for complaints, violation notices, violation observations, source registration, site inspections, etc. Enforcement activities must be supported by adequate legal services.

(g) Provide a communication system for implementing emergency procedures and rapid response to field surveillance and enforcement needs. The applicant agency should be capable of effecting reduction through emergency episode procedures, and of assessing engineering feasibility of the emission regulations being developed.

(h) Provide a program that sets forth legally enforceable procedures that will be used to prevent construction, modification, or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard.

(i) Provide a procedure and capability for obtaining, performing, and/or evaluating source tests of industrial processes and operations required by permit systems and/or regulations.

(j) Provide an operation and maintenance schedule for the operation of laboratory facilities to assure their adequacy for performing analysis of samples and data reduction functions. The program for performing required laboratory operations can be provided as an external service to the agency.

(k) Provide a system for data acquisition, handling, and analysis consistent with maintenance program requirements.

(l) Operate and maintain an air quality monitoring network consistent as a minimum with implementation plan requirements.

(m) Provide in a form prescribed by the Administrator an updated, comprehensive emission inventory of air pollutants being discharged within the applicant's area of jurisdiction and covering the sources and amounts of those air pollutants for which national ambient air quality standards have been promulgated under section 109 of the Clean Air Act (42 U.S.C. 1857c–4) and those that have been determined as hazardous in accordance with section 112 of the Clean Air Act (42 U.S.C. 1857c–7).

(n) Provide data regarding distribution and concentrations of those air pollutants in the ambient air within the applicant's area of jurisdiction which are not currently being reported in accordance with any applicable implementation plan.

§ 35.525–3 Interstate planning.

A program description of an interstate planning agency shall include, but not be limited to, the following:

(a) Where there exists an applicable implementation plan, or portion thereof, a project description shall include:

(1) A listing of the air pollutants and their associated air quality standards applicable to the proposed project.

(2) A description (including geographic and temporal extent) of any unanticipated deficiency in any applicable implementation plan, or portion thereof, which may prevent the timely achievement of any applicable air quality standard.

(3) A description of the applicant's proposals, including alternatives, designed to insure the timely achievement of any applicable air quality standard. These proposals shall set forth project objectives in order of priority and the timetable for achieving such objectives.

(b) For the purpose of developing new implementation plans to meet national ambient air quality standards promulgated by the Administrator, the project description shall include:

(1) A listing of the air pollutants and their associated national ambient air quality standards applicable to the proposed project.

(2) A description of the steps to be taken to develop an implementation plan which will meet the requirements of section 110 of the Clean Air Act (42 U.S.C. 1857c–5) and 40 CFR Part 51.

(c) A description of existing and proposed resources, including staff, facilities, and procedures, adequate for effective implementation of the project.

§ 35.530 Supplemental conditions.

In addition to any other requirement herein, each air pollution control part shall be subject to the following conditions:

(a) Direct cost expenditures for the purchase of real estate or construction of a fixed structure are unallowable, except that costs of monitoring stations may be allowed as direct costs.

(b) The sum of the non-Federal recurrent expenditures by the grantee in the fiscal year for which the grant is awarded shall be equal to or greater than the sum of grantee's recurrent expenditures during the fiscal year immediately preceding the beginning of the current budget period.

(c) The grantee shall provide such information as the Regional Administrator may from time to time require to carry out his functions. Such information may contain, but is not limited to: Air quality data, emission inventory data, data describing progress toward compliance with regulations by specific sources, data on variances granted, and similar regulatory actions.

§ 35.535 Assignment of personnel.

(a) The Administrator may detail personnel of the Environmental Protection Agency to an air pollution control agency pursuant to section 301(b) of the Clean Air Act.

(b) The Regional Administrator, with the concurrence of the grantee, shall reduce grant payments by the amount of pay, allowances, travel, training, and other expenses related to the detail of any EPA officer or employee pursuant to section 105(d) of the Clean Air Act. The amount of the reduction shall be deemed to have been paid to the grantee in determining the amount of any grant.

WATER POLLUTION CONTROL STATE AND INTERSTATE PROGRAM GRANTS

§ 35.551 Definitions.

As used herein, the following words and terms shall have the meaning set forth below:

§ 35.551–1 Allotment.

The sum allocated for each State or interstate agency, the amount of which is determined by application of a formula based upon population, the extent of the water pollution problem, and financial need.

§ 35.551–2 Federal share.

The percentage rate determined pursuant to § 35.557 applied to the allotment to determine the Federal participation in the allowable costs of the water pollution control program.

§ 35.551–3 Interstate agency.

An agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of water pollution.

§ 35.551–4 Per capita income.

With respect to any State, the average of the per capita income of such State for the three most recent consecutive years for which satisfactory data are available from the Department of Commerce; except that, in the absence of such satisfactory data, the per capita income of Alaska shall be deemed to equal the average per capita income of all the States in the continental United States and the per capita incomes of Puerto Rico and the Virgin Islands shall be deemed to equal the per capita income of the State having the lowest per capita income of the continental United States.

§ 35.551–5 Plan.

Any plan, including revisions thereof, for the prevention and control of water pollution submitted by a State water pollution control agency or interstate agency pursuant to § 35.575.

§ 35.551–6 State.

A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

§ 35.551–7 State water pollution control agency.

The State agency charged with primary responsibility of enforcing State laws relating to the abatement of water pollution.

§ 35.555 Allocation of funds.

§ 35.555–1 Notification of funding.

(a) *Tentative allowances.* No later than April 1 of each year, the Administrator will issue to each Regional Administrator a tentative regional allowance for the next fiscal year. This tentative allowance (planning target) will be based on the amount of the appropriation requested for the next fiscal year. The Regional Administrator shall promptly notify each State and interstate agency of its tentative allotment for the next fiscal year.

(b) *Final allowances.* As soon as practicable after funds are made available, the Administrator will issue to each Regional Administrator a final regional allowance for State and interstate allotments from the funds appropriated for each fiscal year.

(c) *Reallotment.* On October 15 of each year, or as soon thereafter as practicable, the Administrator will issue to each Regional Administrator an allowance derived from reallocation of prior year funds.

(d) *Computation of regional allowances.* Tentative and final regional allowances shall be the sum of the tentative or final State and interstate allotments within each EPA region.

§ 35.555–2 Allotments to States.

Funds appropriated for any fiscal year for grants to States shall be allotted among the several States on the basis of $12,000 for each State and the balance on the basis of the following factors:

(1) Two-thirds in the ratio that the product of the population of each State and the reciprocal of its per capita income bears to the sum of the corresponding products for all States.

(2) One-sixth on the basis of the ratio of the population density of a State to the population density of all the States.

(3) One-sixth on the basis of the ratio of the number of industrial establishments discharging industrial wastes in each State to the number of such establishments in all the States. The number of such establishments shall be determined on the basis of the latest available "wet industries" data provided by the Department of Commerce.

§ 35.555–3 Allotments to interstate agencies.

(a) Funds appropriated for any fiscal year for grants to interstate agencies shall be allotted among the several interstate agencies on the basis of the following factors:

(1) Two-thirds in the ratio that the product of the population of the area served by the interstate agency and the reciprocal of the average per capita income of the interstate agency for the three most recent consecutive years bears to the sum of the corresponding products for all the interstate agencies. For this purpose, per capita income of an interstate agency shall mean the total gross income of all the States comprising such interstate agency divided by the total population of all the States comprising such interstate agency.

(2) One-sixth on the basis of the ratio of the average of the population densities of the States comprising each interstate agency area to the sums of the average of the population densities of each interstate agency area.

(3) One-sixth on the basis of the ratio of the number of industrial establishments discharging industrial wastes in the States comprising the interstate agency to the number of such establishments in all the interstate agency areas. The number of such "wet industries" establishments shall be determined on the basis of the latest available data provided by the Department of Commerce.

§ 35.555–4 Population computation.

For purposes of this section, population shall be determined on the basis of the most recent Department of Commerce estimates available at the time of computation.

§ 35.557 Federal share.

§ 35.557–1 Determination of Federal share for States.

For any State the Federal share shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the continental United States (excluding Alaska), except that the Federal share shall in no case be more than 66⅔ per centum or less than 33⅓ per centum, and the Federal share for Hawaii and Alaska shall be 50 per centum, and for Puerto Rico and the Virgin Islands, shall be 66⅔ per centum.

§ 35.557–2 Determination of Federal share for interstate agencies.

For any interstate agency the "Federal share" shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the average per capita income of the States comprising such interstate agencies bears to the per capita income of the continental United States (excluding Alaska), except that the Federal share in no case shall be more than 66⅔ per centum or less than 33⅓ per centum and shall be promulgated on the basis of the same data used for determining the "Federal share" for any State.

§ 35.560 Grant amount.

§ 35.560–1 Determination.

Each State and interstate agency shall receive a grant from its final allotment in an amount not in excess of the approved Federal share of the allowable cost of carrying out its approved plan, including the cost of training personnel for State and local water pollution control work and administering the plan.

§ 35.560–2 Limitation.

When a State or interstate agency matching share percentage rate, when added to the Federal share, is less than 100 percent, the grant amount shall be reduced until the sum of the Federal share and matching share percentage rate equals 100 percent.

§ 35.560–3 Reduction of grant amount.

The grantee must submit a complete application on or before June 1 preceding the fiscal year for which the program application is prepared. If the State or interstate agency does not meet this deadline, the grant amount will be reduced one-sixth of the first 6 months available allotment for each full month's delay.

§ 35.563 Grant limits and duration.

Following approval of the plan, the budget period of the grant shall be the entire fiscal year and Federal assistance shall not exceed the allotment limits specified in § 35.555 and shall be within the Federal share limits of § 35.557.

§ 35.565 Eligibility.

A grant may be awarded to a State or interstate water pollution control agency which has submitted a plan meeting the requirements of § 35.575: *Provided, however,* That such plan has been approved by the appropriate Regional Administrator(s).

§ 35.575 Plan requirements.

A plan shall:

(a) Provide for administration or for the supervision of administration of the plan by the State water pollution control agency or, in the case of a plan submitted by an interstate agency, by such interstate agency;

(b) Provide that such agency will make such reports, in such form and containing such information, as the Regional

Administrator may from time to time reasonably require to carry out his functions under this Act;

(c) Set forth the plans, policies, and methods to be followed in carrying out the State (or interstate) plan and in its administration;

(d) Provide for extension or improvement of the State or interstate program for prevention and control of water pollution program extension or improvement shall be demonstrated by a succinct analysis of the water pollution problem, long-term goals, activities to be accomplished during the budget period, legal authorities, management organization, available resources, and proposed programs the applicant will follow during the budget period.

(e) Provide such accounting, budgeting, and other fiscal methods and procedures as are necessary for the proper and efficient administration of the plan; and

(f) Set forth the criteria used by the State in determining priority of projects as provided in section 8(b)(5) of the Water Pollution Control Act, as amended.

Subpart C—Grants for Construction of Wastewater Treatment Works

§ 35.800 Purpose.

This subpart supplements the EPA general grant regulations and procedures (40 CFR Part 30) and establishes and codifies policies and procedures for grants for the construction of treatment works to prevent the discharge of untreated or inadequately treated sewage or other waste into any waters.

§ 35.801 Authority.

This subpart is issued under section 8 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1158.

§ 35.805 Definitions.

As used in this subpart, the words and terms defined in this section shall have the meaning set forth below:

§ 35.805-1 Construction.

The preliminary planning to determine the economic and engineering feasibility of treatment works, the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary to the construction of treatment works; the erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works; and the inspection and supervision of the construction of treatment works. The phrase "initiation of construction," as used in this subpart, means the issuance of a notice to proceed, or, if none is required, the execution of a construction contract.

§ 35.805-2 Intermunicipal agency.

An agency of two or more municipalities having jurisdiction over disposal of sewage, industrial wastes, or other wastes.

§ 35.805-3 Interstate agency.

An agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution of waters.

§ 35.805-4 Municipality.

A city, town, borough, county, parrish, district, or other public body created by or pursuant to State law, or an Indian tribe or an authorized Indian tribal organization, with jurisdiction over disposal of sewage, industrial wastes, or other wastes.

§ 35.805-5 State.

A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

§ 35.805-6 State water pollution control agency.

The State authority charged with primary responsibility for enforcing the State laws relating to the abatement of water pollution.

§ 35.805-7 Treatment works.

The various devices used in the treatment of sewage or industrial wastes of a liquid nature, including the necessary intercepting sewers, outfall sewers, pumping, power, and other equipment, and their appurtenances, and including any extensions, improvements, remodeling, additions, and alterations thereof.

§ 35.810 Applicant eligibility.

Grants may be made to any State, municipality, intermunicipal or interstate agency.

§ 35.815 Allocation of funds.

§ 35.815-1 Allotments to States.

(a) The first $100 million appropriated for any fiscal year shall be allotted by the Administrator as soon as practicable as follows:

(1) Fifty per centum of such sums in the ratio that the population of each State bears to the population of all the States, and

(2) Fifty per centum of such sums in the ratio that the quotient obtained by dividing the per capita income of the United States by the per capita income of each State bears to the sum of such quotients for all the States. Per capita income shall be determined on the basis of the average of the per capita income of the States and of the continental United States for the three most recent consecutive years for which satisfactory data are available from the Department of Commerce; except that, in the absence of such satisfactory data, the per capita income of (i) Puerto Rico, (ii) the Virgin Islands, and (iii) Guam shall be deemed to equal the per capita income of the State having the lowest per capita income in the continental United States.

For purposes of this section, population shall be determined on the basis of the official population figures of the latest decennial census for which figures are available as certified by the Secretary of Commerce.

(b) Funds in excess of $100 million appropriated for any fiscal year, except as otherwise provided by law, shall be allotted by the Administrator as soon as practicable in the ratio that the population of each State bears to the population of all the States.

(c) Sums available for allocation to States based on eligibility for reimbursement, severe local and basinwide water pollution problems, or other factors shall be divided between such purposes in such proportions as the Administrator may determine and shall be allotted among the States in accordance with the procedures and provisions set forth for reallotment of unobligated funds (see § 35.815-2). Allocation shall be made at such time or times as may be practicable.

(d) Sums allotted to a State under paragraphs (a) and (b) of this section which are not obligated within the time period specified by law shall be reallotted in accordance with the reallotment provisions contained in § 35.815-2.

(e) At least 50 per centum of the first $100 million appropriated for each fiscal year beginning on or after July 1, 1965, shall be used for the construction of treatment works serving municipalities of 125,000 population or under.

(f) The allotment of a State, including reallotments, shall be available, in accordance with the provisions of this subpart, for payments to meet the cost of construction of treatment works in such State for which Federal grants have been approved.

§ 35.815-2 Reallotment.

(a) Reallotment of unobligated funds (see § 35.815-1(d)) will be made within 90 days following their availability for reallotment, or as soon thereafter as practicable, as follows:

(1) Except as set forth in paragraph (b) of this section, unobligated funds shall be reallotted among the States having projects eligible for reimbursement under the provisions of section 8(c) of the Federal Water Pollution Control Act based on the ratio which each State's reimbursement eligibility for all the States: *Provided*, That each State to receive any such reallotment shall first provide such assurances as the Administrator deems appropriate to assure that such funds shall be applied on an equitable pro rata basis with respect to such work in place.

(2) If any funds remain unobligated, such funds shall be reallotted among the States based on the ratio that each State's remaining eligibility for reimbursement bears to the total remaining reimbursement eligibility for all States: *Provided*, That each State to be entitled to any such reallotment shall, within 30 days following the date on which funds become available for reallotment, or as soon thereafter as practicable, provide a statement satisfactory to the Administrator listing projects eligible for reimbursement, which statement shall also

specify the manner in which any reallotted funds should be applied towards the projects so listed.

(3) Prior to making any reallotment under subparagraphs (1) and (2) of this paragraph, the Administrator may determine whether any part of the unobligated funds should be applied in situations of special need to meet severe local and basinwide pollution problems in order to promote the purposes of the Federal Water Pollution Control Act most effectively. In making such determination, the Administrator shall apply the following criteria: (i) The extent of degradation of water quality; (ii) the extent of the financial need; (iii) the extent to which degradation is attributed to untreated or inadequately treated waters of municipalities; (iv) the extent to which facilities to be constructed will contribute to the enhancement of the environment; (v) such other factors as the Administrator considers relevant. The Administrator shall reallot such funds to any State in which such special needs exist on such basis as he may deem most advisable: *Provided*, That each State to receive any such reallotment shall first provide such assurances as the Administrator may require that such funds should be applied to eligible projects selected by the Administrator to meet such needs.

(b) Whenever a State has funds subject to reallotment, prior to such reallotment, additional grants may be made for any projects in that State where the Administrator finds that the need for the projects is due in part to any Federal institution or Federal construction activity which has resulted in an influx of federally connected personnel and have added to the applicant's requirements for sewage treatment works. Such additional grants shall be limited to additional identifiable costs of construction attributable to such Federal institution or Federal construction activity. "Federal institution" shall mean any Federal institution, reservation, installation, base, project, or other similar Federal establishment used by the Federal Government primarily for the performance of functions other than the provision of services to the area in which such establishment is situated. "Federal construction activity" shall mean the construction of any "Federal institution" as herein defined.

(1) Applicants for additional grants must support their claims that the need for their projects is due in part to any Federal institution or Federal construction activity by showing that at least 5 percent of the population contributing wastes to the project are, as of the date of filing the application for the additional grant, in one or more of the following categories:

(i) Federal personnel and their families residing on or at a Federal institution, as well as occupants, patients, and inmates of such institutions;

(ii) Federal personnel and their families working on or at, but residing at other than, a Federal institution;

(iii) Non-Federal personnel and their families working on Federal construction projects involving a Federal institution.

(2) Necessary supporting information submitted by applicants shall be used as the basis for computing a project's additional grant entitlement as follows:

(i) For subdivision (i) of paragraph (b)(1), 100 percent of the product of the per capita cost of the project and the number represented in this category;

(ii) For either subdivision (ii) or (iii) of paragraph (b)(1), 50 percent of the product of the per capita cost of the project and the number represented by such category;

(iii) Provided that in any case the additional grant entitlement with respect to any category shall be reduced by the amount of any Federal contribution by any other Federal agency toward the capital cost of the approved project made on behalf of such category. The total of the sums of the above calculations shall be the maximum entitlement of an individual project for an additional grant.

(3) If the total of all entitlements for additional grants exceeds the funds available to a State for such grants, the available funds will be prorated over all eligible applicants for such grants in the State.

(4) In any instance where a grantee community claims its need for a project is due in part to any Federal institution or federally construction activity, but because of exceptional circumstances is not measurable by the criteria set out above, a request for special consideration may be made pursuant to the deviation procedures (see 40 CFR 30.1001).

(5) In no event shall any additional grant be made in an amount which, together with the amount of the basic grant and, as appropriate, other Federal and State contributions, will exceed the total eligible project cost.

§ 35.820 Grant limitations.

§ 35.820-1 Exceptions.

No grant shall be made for any project in an amount exceeding 30 per centum of the estimated reasonable cost of the project, except that:

(a) The percentage limitation shall be increased to a maximum of 40 per centum if the State agrees to pay not less than 30 per centum of the cost of all projects for which Federal grants are to be made from the same fiscal year's allocation, or

(b) The percentage limitation shall be increased to a maximum of 50 per centum if the State agrees to pay not less than 25 per centum of the cost of all projects for which Federal grants are to be made from the same fiscal year's allocation and enforceable water quality standards have been established for the waters into which the project discharges, in accordance with section 10(c) of the Federal Water Pollution Control Act in the case of interstate waters, and under State law in the case of intrastate waters.

(c) The amount of a grant may be increased by an additional 10 per centum of such grant for any project which has been certified by an official State, metropolitan, or regional planning agency empowered under State or local laws or interstate compact to perform metropolitan or regional planning for a metropolitan area within which such grant is to be used, or other agency or instrumentality designated for such purposes by the Governor (or Governors in the case of interstate planning) as being in conformity with the comprehensive plan developed or in process of development for such metropolitan area. "Metropolitan area" means either (1) a standard metropolitan statistical area as established by the Office of Management and Budget except as may be determined by the President as not being appropriate for the purposes hereof, or (2) any urban area, including those surrounding areas that form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities, which in the opinion of the President lends itself as being appropriate for the purposes hereof.

§ 35.825 Application for grant.

§ 35.825-1 Preapplication procedures.

Preapplication assistance regarding construction grants for waste water treatment works, including the necessary application forms, should be obtained from the State water pollution control agency or the appropriate EPA regional office.

§ 35.825-2 Formal application.

An application for waste water treatment works construction grants shall be submitted to the State water pollution control agency. Upon approval of the application and certification of the project for priority, the State water pollution control agency will transmit the application to the appropriate EPA regional office.

§ 35.830 Determining the desirability of projects.

In determining the desirability of treatment works projects, the State water pollution control agency and the regional administrator shall give consideration to the following:

(a) The relation of the estimated cost of the project, including operation and maintenance, to the public interest and to the necessity for the project;

(b) The propriety of Federal aid in construction of the project, which will be determined on the basis of one or more of the following criteria:

(1) Effective control. Whether the project effectively contributes to the control of pollution of the waters into which the project discharges its treated water.

(2) International treaty obligations. Whether the project is required to control pollution in meeting international treaty obligations or agreements.

(3) Federal impact. Whether the project involves a pollution problem affected by (i) Federal installations contributing to the total municipal waste loadings; (ii) a water use requirement involving national defense; (iii) a Federal water resource development; or (iv) an increase in population due to any Federal institution or Federal construction activity which has resulted in an influx of federally connected personnel and which have added to the applicant's requirements for sewage treatment works.

(4) Public health necessity. Whether the project involves treatment works required to abate a public health hazard.

(5) Financial burden. Whether the municipality can demonstrate that the construction of sewage treatment works involves an extraordinary and excessive financial burden in relation to the municipality's economic resources.

(6) Enforcement recommendations. Whether the construction of the sewage treatment plant is recommended or required by Federal or State water pollution control enforcement authorities.

(c) The public benefits to be derived by the construction of the project;

(d) The related projects requiring completion before full benefit can be derived from the project for which the application is made and the degree to which the completion of the related projects in the near future is assured;

(e) The feasibility of utilizing available facilities; and,

(f) The probability that the project will be constructed and put into operation within a reasonable time.

§ 35.835 Criteria for award.

In addition to the evaluation required pursuant to § 35.830, the Regional Administrator shall determine whether the following criteria are met, prior to the award of the grant:

§ 35.835–1 State plan and priority.

The project must be in conformity with the State water pollution control plan submitted pursuant to the provisions of section 7 of the Federal Water Pollution Control Act and must be certified by the State Water Pollution Control Agency as entitled to priority over other eligible projects on the basis of financial as well as water pollution control needs; except that in the case of additional grants as provided for in the case of impact grants (see § 35.815–2(b)) and for conformity with metropolitan plans (see § 35.820–1(c)), no additional State certification of priority shall be required for the project receiving such an additional grant.

§ 35.835–2 Basin control.

No grant may be awarded unless the Regional Administrator determines, based on information furnished to him by the appropriate State or interstate agency having jurisdictional responsibilities for the area of concern, that the project is included in an effective current basinwide plan for pollution abatement in accordance with applicable water quality standards. Such basinwide plan must be in conformity with the requirements set forth in § 35.105–1.

§ 35.835–3 Regional and metropolitan plan.

No grant may be awarded unless the Regional Administrator determines that the project is included in an effective metropolitan or regional plan developed or in the process of development, and certified by the Governor or his designee as being the official pollution abatement plan developed or in the process of development for the metropolitan area or region within which the project is proposed to be constructed. In the case of an interstate metropolitan or regional area, the plan shall be certified by the respective Governors or their designees. Such plan must meet the requirements set forth in § 35.105–2.

§ 35.835–4 Adequacy of treatment.

No grant may be awarded unless the applicant provides assurance satisfactory to the Regional Administrator that the proposed project is designed to result in an operable treatment works, or part thereof, which will adequately treat sewage or industrial wastes of a liquid nature in order to abate, control, or prevent water pollution. Such assurance must certify that the treatment works or part thereof, if constructed, operated, and maintained in accordance with plans, designs, and specifications will result in: (a) Substantially complete removal of all floatable and settleable materials; (b) removal of not less than 85 percent of 5-day biochemical oxygen demand of equivalent; (c) substantially complete reduction of pathogenic microorganisms on a continuous basis; and (d) such additional treatment as may be necessary to meet applicable water quality standards, recommendations of the Administrator, or order of a court pursuant to section 10 of the Federal Water Pollution Control Act: *Provided*, That in the case of a project which will discharge wastes into open ocean waters through an ocean outfall, the Administrator may waive the requirements of subparagraph (b) of this paragraph if he determines that such discharges will not adversely affect the open ocean environment and adjoining shores: *Provided further*, That in the case of a project designed solely to treat or control wet weather combined sewer overflows, the Administrator may waive the requirements of subparagraphs (b) and (c) of this section if he finds such project to be consistent with river basin and regional or metropolitan plans to meet approved water quality standards.

§ 35.835–5 Industrial waste treatment.

(a) Where a project will treat industrial wastes, a grant may be awarded at the discretion of the Regional Administrator: *Provided*, That such project is included in a waste treatment system treating the wastes of the entire community, metropolitan area, or region concerned. For the purposes of this section, "waste treatment system" means one or more treatment works which provide integrated, but not necessarily interconnected, waste disposal for a community, metropolitan area or region.

(b) Where industrial wastes are to be treated by the proposed project, no grant may be awarded unless the applicant provides assurance satisfactory to the Regional Administrator that such applicant will require pretreatment of any industrial waste which would otherwise be detrimental to the treatment works or its proper and efficient operation and maintenance, or will otherwise prevent the entry of such waste into the treatment plant.

(c) Where industrial wastes are to be treated by the proposed project, no grant may be awarded unless the applicant provides assurance satisfactory to the Regional Administrator that the applicant has, or will have in effect when the project will be operated, an equitable system of cost recovery. Such system of cost recovery may include user charges, connection fees, or such other techniques as may be available under State and local law. Such system shall provide for an equitable assessment of costs whereby such assessments upon dischargers of industrial wastes correspond to the cost of the waste treatment, taking into account the volume and strength of the industrial, domestic, commercial wastes, and all other waste discharges treated, and techniques of treatment required. Such cost recovery system shall produce revenues, in proportion to the percentage of industrial wastes, proportionately, relative to the total waste load to be treated by the project, for the operation and maintenance of the treatment works, for the amortization of the applicant's indebtedness for the cost of such treatment works, and for such additional costs as may be necessary to assure adequate waste treatment on a continuing basis. For purposes of this section "industrial waste" shall mean the waste discharges (other than domestic sewage) of industries identified in the "Standard Industrial Classification Manual," Bureau of the Budget, 1967, as amended and supplemented, under the category "Division D—Manufacturing," and such other wastes as the Regional Administrator deems appropriate for purposes of this section.

§ 35.835–6 Design.

No grant may be awarded unless the Regional Administrator determines that the proposed treatment works is designed so as to achieve economy, efficiency, and effectivenes in the prevention or abatement of pollution or enhancement of the quality of the water into which such treatment works effluent will discharge and meet such requirements as the Administrator may publish from time to time concerning treatment works design.

§ 35.835–7 Operation and maintenance.

No grant may be awarded unless the applicant has made provision satisfactory to the Regional Administrator that the treatment works will be maintained and operated in accordance with such requirements as the Administrator may publish from time to time concerning methods, techniques and practices for economic, and efficient, effective operation and maintenance of treatment works. Such provision shall include, but not be limited to, (a) an operation and maintenance manual, including emergency readiness plan, (b) properly trained personnel, and (c) operational reports.

§ 35.835–8 Operation during construction.

Where an existing waste treatment facility is to be modified or enlarged, no grant may be awarded unless the applicant provides assurance satisfactory to the Regional Administrator that the treatment works will be operated during construction to obtain optimum treatment of sewage.

§ 35.835–9 Postconstruction inspection.

No grant may be awarded unless the State Water Pollution Control Agency provides assurance satisfactory to the Regional Administrator that the State will inspect the treatment works not less frequently than annually for the 3 years after such treatment works is constructed and periodically thereafter to determine whether such treatment works is operated and maintained in an efficient, economic, and effective manner.

§ 35.840 Supplemental grant conditions.

In addition to the EPA general grant conditions (Appendix A to this subchapter), each wastewater treatment works construction grant shall be subject to the following conditions:

(a) All measures required to minimize water pollution to affected waters shall be undertaken in the planning and construction processes of the treatment plant to be financed in part by the Federal grant. To achieve this end, regard shall be given to the selection of a plantsite compatible with the protection of the natural environment and the watershed natural cover, engineering and work measures to assure minimal siltation and bank erosion from the construction process, and other measures which reduce water pollution to a minimum.

(b) Construction work will be performed by the lump sum (fixed) price or unit price contract method; adequate methods of advertising for and obtaining sealed competitive bids will be employed prior to award of the construction contract; and the award of the contract will be made to the responsible bidder submitting the lowest responsive bid, which shall be determined without regard to State or local law whereby preference is given on factors other than the amount of the bid.

(c) The project will not be advertised or placed on the market for bidding until the final plans and specifications have been approved by the Regional Administrator, and the appropriate State water pollution control agency and the applicant has been so notified.

(d) On construction contracts exceeding $100,000, the contractor must furnish performance and payment bonds, each of which shall be in an amount not less than 100 per centum of the contract price. Construction contracts less than $100,000 shall follow the State or local requirements relating to bid guarantees, performance bonds, and payment bonds. In all cases, the contractor must maintain during the construction phase of the contract adequate fire and extended coverage, workmen's compensation, public liability and property damage insurance. Proceeds of the performance and payment bonds and fire and extended coverage insurance shall, in the discretion of the Regional Administrator, be applied to meet the cost of construction of the project.

(e) The construction of the project, including the letting of contracts in connection therewith, shall conform to the applicable requirements of State, territorial, and local laws and ordinances except as provided in § 35.840 (b) and (d).

(f) Any construction contract must provide that representatives of the Environmental Protection Agency and the State will have access to the work whenever it is in preparation or progress and that the contractor will provide proper facilities for such access and inspection. The contract must also provide that the Grants Officer, the Comptroller General of the United States, or any authorized representative shall have access to any books, documents, papers, and records of the contractor which are pertinent to the project for the purpose of making audit, examination, excerpts, and transcriptions thereof.

(g) The grantee will provide and maintain competent and adequate engineering supervision and inspection for the project to insure that the construction conforms with the approved plans and specifications.

(h) The applicant will demonstrate to the satisfaction of the Regional Administrator that he has or will have a fee simple or such other estate or interest in the site of the project, and rights of access, as the Regional Administrator finds sufficient to assure undisturbed use and possession for the purpose of construction and operation for the estimated life of the project; and in the case of projects serving more than one municipality, that the participating communities have such interests or rights as the Regional Administrator finds sufficient to assure their undisturbed utilization of the project for the estimated life of the project.

(i) The grantee agrees to construct the project or cause it to be constructed in accordance with the application and plans and specifications approved by the Regional Administrator.

(j) In addition to the notification of project changes pursuant to 40 CFR 30.900–1, a copy of any construction contract, or modifications thereof, and of revisions to plans and specifications must be submitted to the Regional Administrator through the State water pollution control agency.

(k) In addition to the notification of project changes required pursuant to 40 CFR 30.900–1, prior approval by the Regional Administrator and the State water pollution control agency is required for project changes which (i) substantially alter the design and scope of the project, (ii) alter the type of treatment to be provided, (iii) substantially alter the location, size, capacity, or quality of any major items of equipment; or (iv) increase the amount of Federal funds needed to complete the project: *Provided*, That prior EPA approval is not required for changes to correct errors, minor changes, or emergency changes. No approval or disapproval of a project change pursuant to 40 CFR 30.900 or this section shall commit or obligate the United States to any increase in the amount of the grant or payments thereunder, but shall not preclude submission or consideration of a request for a grant amendment pursuant to 40 CFR 30.901.

§ 35.845 Payments.

Installment payments of the Federal grant shall be made upon request of the applicant and shall be based on the cost of the work performed, materials and equipment furnished, and services rendered in connection with an approved project. Payments will generally be made in four installments, except as the Regional Administrator may otherwise direct. Final payment will be made only after a final inspection by an EPA representative upon completion of the project.

§ 35.850 Reimbursement [Reserved].

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Rules and Regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER D—GRANTS

PART 35—STATE AND LOCAL ASSISTANCE

Grants for Construction of Treatment Works

The Federal Water Pollution Control Act Amendments of 1972 authorize the award of construction grants for waste treatment works which constitute a contractual obligation of the United States for payment of the Federal share of the construction costs of such projects. Regulations to implement this grant/contract authority are hereby promulgated.

Previous construction grant regulations (40 CFR 35.800 et seq.) are applicable to previously awarded construction grants and will remain in effect. The new regulations hereby promulgated establish policies and procedures applicable only to construction grant awards from fiscal year 1973 and later contractual obligation authority.

A summary of the grant process for contract authority grants is contained within the regulations (40 CFR 35.903). While new procedures and requirements are established pursuant to title II of the new statute, an effort has been made to conform the new grant system to the former method of awarding grants to provide for as smooth a transition as possible and also to permit funding without delay of meritorious applications already forwarded to State and EPA Regional Offices.

Section 201(g)(3) of the new Act requires that no grant be awarded after July 1, 1973 unless the applicant satisfactorily demonstrates that the sewer collection system discharging into the works is not subject to excessive infiltration and section 201(g)(4) authorizes Federal assistance for sewer system evaluation studies necessary to determine whether there is excessive infiltration. Procedures to permit Federal assistance under these requirements as a part of the usual construction grant process are incorporated in these regulations and will be applicable to grants awarded after June 30, 1973.

Separate regulations will be promulgated to implement the provisions of section 206 of the Federal Water Pollution Control Act Amendments of 1972.

Interested parties are encouraged to submit written comments, views, or data concerning the interim regulations promulgated hereby to the Director, Grants Administration Division, Environmental Protection Agency, Washington, D.C. 20460. All such submissions received on or before April 30, 1973 will be considered prior to promulgation of final construction grant regulations. Suggestions for changes to EPA regulations promulgated in this Subchapter are solicited on a continuous basis pursuant to 40 CFR 30.106.

Effective date. The interim construction grant regulations promulgated hereby shall become effective on February 28, 1973. All Environmental Protection Agency contract grant authority construction grants pursuant to Public Law 92-500 shall be subject to these interim grant regulations. It is necessary that these regulations take effect prior to a 30-day period after promulgation because of the necessity to expedite award of construction grants in order to meet water quality requirements.

William D. Ruckelshaus,
Administrator.

February 23, 1973.

Part 35 of title 40 is amended by reserving Subpart D and adding Subpart E which contains the material formerly codified as Subpart D (37 FR 26262, Dec. 8, 1972).

Subpart D—[Reserved]

Subpart E—Grants for Construction of Treatment Works—Federal Water Pollution Control Act Amendments of 1972

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Authority: Secs. 201 through 205, 207, 210 through 212, and 501(a) of the Act.

Subpart D—[Reserved]

Subpart E—Grants for Construction of Treatment Works—Federal Water Pollution Control Act Amendments of 1972

§ 35.900 Purpose.

This subpart supplements the EPA general grant regulations and procedures (Part 30 of this chapter) and established policies and procedures for grants to assist the construction of publicly owned waste treatment works in compliance with the Federal Water Pollution Control Act.

§ 35.901 Authority.

This subpart is promulgated pursuant to sections 201 through 205, 207, 210 through 212, and 501(a) of the Act.

§ 35.903 Summary of construction grant program.

(a) The construction of federally financed waste treatment works generally is accomplished in three steps—(1) preliminary plans and studies, (2) preparation of construction drawings and specifications, and (3) fabrication and building of a complete and operable treatment works. Although in most cases completion of preliminary plans and studies will be a prerequisite to award of a grant, in order to allow State and Federal officials an adequate basis to determine the merits of proposed projects, the EPA Regional Administrator may award a grant for completion of preliminary plans and studies (the first step). A grant for a project will include an initial payment for the Federal share of the unreimbursed allowable costs of completed work (e.g. preliminary plans and studies, preparation of final construction drawings and specifications), if such prior costs are within the scope of the proposed project and the grant amount certified by the State agency. In no case may a grant be awarded unless the proposed project has received a priority certification which accords with an approved State system for determining the priority of needed treatment works.

(b) The scope of a project may include one or more construction steps and will be determined by the definition of the project in the grant application submitted to the State agency, by the scope of the project for which State priority certification is given, and finally by the scope of the project for which the Regional Administrator awards a grant. Funding of a complete treatment works may (but need not) be "split" into a project or grant for each step. The State is responsible for determining the amount and timing of Federal assistance to each municipality for which treatment works funding is needed.

(c) Upon award of a grant under this subpart, the grantee may submit a request for payment for the unpaid Federal share of allowable project costs incurred prior to the award, and the grant shall constitute a contractual obligation of the United States to pay the Federal share of allowable project costs up to the amount approved in the grant agreement (including amendments).

(d) No grant may be awarded under this subpart for a project for the building and erection of a treatment works (Step 3) if initiation of the project construction has occurred, that is, if a notice to proceed has been issued under a construction contract for any portion of the project work or, if notice to proceed is not required, if the construction contract has been executed.

(e) Applications for grants and grant amendments must first be submitted to the State agency, and the State agency may then forward to the appropriate EPA Regional Administrator complete project applications or grant amendments which have been certified by the State agency as entitled to priority.

(f) Sewage collection systems for new communities, new subdivisions, or newly developed urban areas must be addressed in the planning of such areas and must be included as a part of the development costs of the new construction in these areas; they are not to be covered under the construction grant program.

§ 35.905 Definitions.

As used in this subpart, the following words and terms shall have the meaning set forth below:

§ 35.905–1 The Act.

The Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92–500).

§ 35.905–2 Combined sewer.

A sewer intended to serve as a sanitary sewer and a storm sewer.

§ 35.905–3 Construction.

Any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items. The phrase "initiation of construction," as used in this subpart, means the issuance of a notice to proceed, or, if none is required, the execution of a construction contract.

§ 35.905–4 Excessive infiltration/inflow.

The quantities of infiltration/inflow which can be economically eliminated from a sewer system by rehabilitation, as determined by a cost-effectiveness analysis that (for the design life of the treatment works) compares correcting the infiltration/inflow conditions with increasing the treatment works capacity to provide the required waste water treatment for the quantities of infiltration/inflow.

§ 35.905–5 Infiltration.

The water entering a sewer system and service connections from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguished from, inflow.

§ 35.905–6 Inflow.

The water discharged into a sewer system and service connections from such sources as, but not limited to, roof leaders, cellar, yard, and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm waters, surface run-off, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

§ 35.905–7 Infiltration/inflow.

The total quantity of water from both infiltration and inflow without distinguishing the source.

§ 35.905–8 Interstate agency.

An agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of water pollution.

§ 35.905–9 Municipality.

A city, town, borough, county, parish, district (but excluding a school district), association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or pursuant to State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under section 208 of the act.

§ 35.905–10 Project.

The scope of work for which Federal assistance is awarded by a grant pursuant to this Subpart.

§ 35.905–11 Sanitary sewer.

A sewer intended to carry only sanitary and industrial waste waters from residences, commercial buildings, industrial plants, and institutions.

§ 35.905–12 State.

A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

§ 35.905–13 State agency.

The State water pollution control agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.

§ 35.905–14 Storm sewer.

A sewer intended to carry only storm waters, surface run-off, street wash waters, and drainage.

§ 35.905–15 Treatment works.

Any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of the act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water run-off, or industrial waste, including waste in combined storm water and sanitary sewer systems.

§ 35.908 Advanced technology and accelerated construction techniques.

It is the policy of the Environmental Protection Agency to encourage and, where possible, to assist in the development of advanced technology and accelerated construction techniques for the construction of waste treatment works. New technology may be developed or demonstrated with the assistance of EPA research or demonstration grants awarded under title I of the act. New technology which has been successfully demonstrated under comparable conditions may be utilized in the construction of treatment works under this subpart. In addition, the Regional Administrator, with the concurrence of the appropriate Assistant Administrator(s), may award a comprehensive grant (§ 30.205 of this chapter) to include the application or demonstration of new technology assisted under title I of the act in any portion of a treatment works constructed principally with assistance under this subpart, pursuant to this subchapter and such conditions and procedures for EPA assistance as the Director, Grants Administration Division, may approve.

§ 35.910 Allocation of funds.

§ 35.910–1 Allotment.

(a) The Administrator shall allot among the States, funds authorized to be appropriated pursuant to section 207, in the ratio that the estimated cost of constructing all needed publicly owned treatment works in each State bears to the estimated cost of construction of all needed publicly owned treatment works in all of the States. For fiscal years ending June 30, 1973, and June 30, 1974, sums not to exceed $2 billion and $3 billion, respectively, have been determined to be the actual amounts authorized to be appropriated within the corresponding maximum amounts specified in section 207 and will be allotted on a ratio determined on the basis of Table III of House Public Works Committee Print No. 92–50. Computation of a State's ratio shall be carried out to the nearest ten-thousandth percent (0.0001 percent) and allotted amounts will be rounded to the nearest thousand dollars. The applicable percentages to be used in computing State allotments for fiscal years 1973 and 1974 are as follows:

State	*Percentage*
Alabama	.3612
Alaska	.2252
Arizona	.1346
Arkansas	.3536
California	9.8176
Colorado	.3166
Connecticut	1.6810
Delaware	.6565
District of Columbia	.7114
Florida	3.6264
Georgia	.9730
Hawaii	.3303
Idaho	.2177
Illinois	6.2489
Indiana	3.3662
Iowa	1.1557
Kansas	.3742
Kentucky	.6599
Louisiana	.9428
Maine	.9675
Maryland	4.2582
Massachusetts	3.7576
Michigan	7.9814
Minnesota	2.0319
Mississippi	.3935
Missouri	1.6556
Montana	.1662
Nebraska	.3708
Nevada	.2877
New Hampshire	.8309
New Jersey	7.7040
New Mexico	.2108
New York	11.0578
North Carolina	.9229
North Dakota	.0467
Ohio	5.7737
Oklahoma	.4608
Oregon	.8494
Pennsylvania	5.4214
Rhode Island	.4889
South Carolina	.6455
South Dakota	.0948
Tennessee	1.1605
Texas	2.7694
Utah	.1408
Vermont	.2218
Virginia	2.9143
Washington	.8906
West Virginia	.4999
Wisconsin	1.7415
Wyoming	.0268
Guam	.0872
Puerto Rico	.8845
Virgin Islands	.0893
American Samoa	.0048
Trust Territory of Pacific	.0378
	100.0000

(b) Based upon the applicable percentages, the sums allotted to the States for fiscal years 1973 and 1974 are as follows:

State	Fiscal year 1973	Fiscal year 1974
Alabama	7,224,000	10,836,000
Alaska	4,504,000	6,756,000
Arizona	2,692,000	4,038,000
Arkansas	7,072,000	10,608,000
California	196,352,000	294,528,000
Colorado	6,332,000	9,498,000
Connecticut	33,620,000	50,430,000
Delaware	13,130,000	19,695,000
District of Columbia	14,228,000	21,342,000
Florida	72,528,000	108,792,000
Georgia	19,460,000	29,190,000
Hawaii	6,606,000	9,909,000
Idaho	4,354,000	6,531,000
Illinois	124,978,000	187,467,000
Indiana	67,324,000	100,986,000
Iowa	23,114,000	34,671,000
Kansas	7,484,000	11,226,000
Kentucky	13,198,000	19,797,000
Louisiana	18,856,000	28,284,000
Maine	19,350,000	29,025,000
Maryland	85,164,000	127,746,000
Massachusetts	75,152,000	112,728,000
Michigan	159,628,000	239,442,000
Minnesota	40,638,000	60,957,000
Mississippi	7,870,000	11,805,000
Missouri	33,112,000	49,668,000
Montana	3,324,000	4,986,000
Nebraska	7,416,000	11,124,000
Nevada	5,754,000	8,631,000
New Hampshire	16,618,000	24,927,000
New Jersey	154,080,000	231,120,000
New Mexico	4,216,000	6,324,000
New York	221,156,000	331,734,000
North Carolina	18,458,000	27,687,000
North Dakota	934,000	1,401,000
Ohio	115,474,000	173,211,000
Oklahoma	9,216,000	13,824,000
Oregon	16,988,000	25,482,000
Pennsylvania	108,428,000	162,642,000
Rhode Island	9,778,000	14,667,000
South Carolina	12,910,000	19,365,000
South Dakota	1,896,000	2,844,000
Tennessee	23,210,000	34,815,000
Texas	55,388,000	83,082,000
Utah	2,816,000	4,224,000
Vermont	4,436,000	6,654,000
Virginia	58,286,000	87,429,000
Washington	17,812,000	26,718,000
West Virginia	9,998,000	14,997,000
Wisconsin	34,830,000	52,245,000
Wyoming	536,000	804,000
Guam	1,744,000	2,616,000
Puerto Rico	17,690,000	26,535,000
Virgin Islands	1,786,000	2,679,000
American Samoa	96,000	144,000
Trust Territory of Pacific	756,000	1,134,000
Total	2,000,000,000	3,000,000,000

(c) Allotments for fiscal years which begin after the fiscal year ending June 30, 1974, shall be made only in accordance with a revised cost estimate required to be submitted to and approved by Congress.

(d) Allotments shall be made not later than the January first preceding the beginning of the fiscal year for which authorized, except for the allotment for fiscal year 1973 which is made herein.

§ 35.910–2 Reallotment.

(a) Sums allotted to a State under § 35.910–1 shall be available for obligation on and after the date of such allotment and shall continue to be available to such State for a period of 1 year after the close of the fiscal year for which such sums are authorized. Funds remaining unobligated at the end of the allotment period will be immediately reallotted by the Administrator, generally on the basis of the ratio used in making the last allotment.

(b) Any sums which have been obligated under section 203 of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92–500) and which are released by the payment of the final voucher for the project shall be immediately credited to the State to which such sums were last allotted. Such released sums shall be added to the amounts last allotted to such State and shall be immediately available for obligation in the same manner and to the same extent as such last allotment.

(c) Reallotted sums shall be added to the last allotments made to the States and shall be in addition to any other funds otherwise allotted.

§ 35.915 State determination and certification of project priority.

Construction grants will be awarded from allotments available pursuant to § 35.910 in accordance with a State system for the certification of priority for construction grant projects.

(a) *State priority system.* Each State agency must submit for the approval of the Regional Administrator a description of the State priority system, including the criteria used by the State in determining priority for construction grant projects. The Regional Administrator shall be notified of each significant revision to an approved State priority system no later than 30 days prior to the effective date of the revision. The Regional Administrator may disapprove the State priority system or any revision thereto, provided that he shall first notify the State in writing of the specific respects in which he has determined that the system, or the administration thereof, fails to meet the applicable requirements of sections 301 and 302 of the Act.

(b) *List of municipalities.* The State agency shall prepare, in accordance with the approved State priority system, a list of municipalities, consisting of an inventory and ranking, in order of priority, of municipalities not meeting applicable requirements of sections 301 and 302 of the Act, and must submit such listing to the Regional Administrator prior to the award of a grant for any project after

June 30, 1973: *Provided*, (1) That the Regional Administrator may approve the list included with the annual State program plan submission (Part 35, Subpart B of this part); and (2) notwithstanding the foregoing, the Regional Administrator shall approve the list, or any portion thereof, which is prepared in accordance with any State plan approved pursuant to section 303(e)(3)(H) of the act for the certification of projects after the date of approval of such plan.

(c) *Project list*. The State agency shall submit for the approval of the Regional Administrator a listing of all projects for which Federal assistance will be requested, from current allotments, the priority for which shall be derived from the list of municipalities. Such project list shall set forth a tabulation of funding priorities and requirements including, as a minimum, the following information for each project: (1) Name of municipality; (2) brief description of type of project and anticipated scope of project; (3) the estimated total project cost; (4) estimated dates of initiation and completion of preliminary plans and studies; (5) estimated dates of completion of construction drawings and specifications; (6) estimated dates of initiation and completion of building and erection; and (7) estimated amount of EPA assistance required to complete the project, including identification of the 6-month period (July 1–December 31, January 1–June 30) when a grant award will be required. Such project list shall be submitted for the approval of the Regional Administrator annually as part of the State program submission pursuant to Part 35, Subpart B of this part, and may be revised as necessary, with the approval of the Regional Administrator upon compliance with the public participation requirements of paragraph (e) of this section: *Provided*, That the State agency may elect to rely upon the 1-year list submitted in accordance with § 35.575(f) to satisfy the foregoing project list requirements with respect to grants awarded prior to July 1, 1973.

(d) *State priority certification for projects*. The State agency must forward with each application submitted to the Regional Administrator a certification that the proposed project is entitled to priority in accordance with the State priority system, and requires the specified funding requested from allotments currently available. The State agency is responsible for defining the scope of treatment works projects and determining the time when such projects are to receive Federal financial assistance.

(e) *Public participation*. The Regional Administrator may not approve a State priority system or revision thereof in effect after June 30, 1973, unless he determines that the State agency has afforded adequate opportunity for oral or written municipal and public comment upon the State priority system, the list of municipalities, and the project list, or revisions, prior to submission to the Regional Administrator.

§ 35.920 Grant application.

Grant applications will be submitted and evaluated in accordance with Part 30, Subpart B of this chapter.

§ 35.920–1 Eligibility.

Municipalities, intermunicipal agencies, States, or interstate agencies may apply for grants.

§ 35.920–2 Procedure.

Preapplication assistance, including, where appropriate, a preapplication conference, may be requested from the appropriate EPA Regional Office. An application must be submitted to the State agency for each proposed project. The State agency will submit to the Regional Administrator those applications for construction grants which are complete and which relate to projects which have received priority certification in accordance with § 35.915.

§ 35.920–3 Contents of application.

(a) *Project for preliminary plans and studies (Step 1)*. An application for a grant for preliminary plans and studies shall include but not be limited to:

(1) State priority certification in accordance with § 35.915;

(2) A brief description of the nature and scope of the proposed project;

(3) Required comments or approvals of relevant State, local, and Federal agencies (including "clearinghouse" requirements of OMB Circular A–95);

(4) An estimate of the proposed project cost; and

(5) Proposed subagreements, or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project work.

(b) *Project for preparation of construction drawings and specifications (Step 2)*. An application for a grant for preparation of construction drawings and specifications shall include but not be limited to:

(1) State priority certification in accordance with § 35.915;

(2) Sewer system evaluation in accordance with § 35.927;

(3) Feasibility report;

(4) Engineering report, including, but not limited to:

(i) Facility design data incorporating:

(*a*) Results of sewer system evaluation;

(*b*) Estimated effluent quality, with respect to all parameters required by applicable effluent limitations and water quality standards; and

(*c*) Proposed method for ultimate disposal of sludge.

(ii) Cost estimates for design and construction; and

(iii) Schedule for completion of design and construction.

(5) Description of proposed user charge system in accordance with § 35.928;

(6) Statement regarding availability of proposed site, if relevant;

(7) Statement regarding ability of applicant to obtain discharge permit for proposed facility;

(8) Required comments or approvals of relevant State, local, and Federal agencies (including compliance with "clearinghouse" requirements of OMB Circular A–95);

(9) Environmental assessment, in accordance with Part 6 of this chapter unless the Regional Administrator determines, at the request of the applicant, that there is insufficient data available to prepare such assessment, provided that the environmental assessment must then be submitted to the Regional Administrator at or prior to the time of submission of plans and specifications for the building and erection of a treatment works;

(10) Statement regardng the applicant's financial, legal, institutional, and managerial capabilities to insure the construction, operation, and maintenance of the treatment works;

(11) Statement regarding compliance with other applicable Federal statutory and regulatory requirements (see 40 CFR Part 30, Subpart C);

(12) Statement regarding compliance with title VI of Civil Rights Act of 1964;

(13) Statement regarding applicant's proposed operation and maintenance program;

(14) Proposed subagreements, or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project work.

(c) *Project for building and erection of a treatment works (Step 3)*. An application for a grant for the building and erection of a treatment works shall include the items in paragraph (b) of this section, and in addition shall include two complete sets of the construction drawings and specifications, suitable for bidding purposes: *Provided*, That if any such information has been furnished with an earlier application, the applicant need only incorporate by reference and update or revise such information.

(d) *Design/construct project*. An application for a grant for a design/construct project shall include the items in paragraphs (b) and (c) of this section, except that, in lieu of construction drawings and specifications, the proposed performance specifications and other relevant design/construct criteria for the project shall be submitted.

§ 35.925 Limitations on award.

Before approving a grant for any project for any treatment works, the Regional Administrator shall determine:

§ 35.925–1 Facility planning.

That a current basin plan and regional or metropolitan plan as required in accordance with §§ 35.150–1 and 35.150–2 have been adopted (facility planning requirements will be an eligible construction grants cost as provided for in §§ 35.905–3 and 35.940–1(d)).

§ 35.925–2 State plan.

That such works are in conformity with any applicable State plan approved in accordance with section 303(e) of the act.

§ 35.925-3 Priority certification.

That such works have been certified by the State agency as entitled to priority in accordance with § 35.915, and that the award of a grant for the proposed project will not jeopardize the funding of any treatment works of higher priority.

§ 35.925-4 State allocation.

That the award of the grant will not result in the total of all grants awarded to applicants of a State, including grant increases, to exceed the total of all allotments and reallotments available to such State pursuant to § 35.910.

§ 35.925-5 Applicant's funding capability.

That the applicant has agreed to pay the non-Federal project costs.

§ 35.925-6 Permits.

That the applicant has provided assurance acceptable to the Regional Administrator that any necessary discharge permit has been or will be obtained in accordance with section 402 of the act.

§ 35.925-7 Design.

If the application is for a project which includes the building and erection of a treatment works (Step 3),

(a) That the design, size, and capacity of such works are cost effective and relate directly to the needs to be served by such works, including adequate reserve capacity;

(b) That such works will meet applicable effluent limitations and applicable water quality standards and attain not less than secondary treatment as defined by the Administrator pursuant to section 301(b)(1)(B) and 304(d)(1) of the act;

(c) That alternative waste treatment techniques have been studied and evaluated;

(d) And, if the grant is to be awarded from funds authorized for any fiscal year beginning after June 30, 1974, that such works will provide for the application of the best practicable waste treatment technology over the life of the works consistent with the purposes of title II of the act;

(e) And, if the grant is to be awarded after July 1, 1973, that each sewer system, including interceptor and collection sewers, discharging into such treatment works is not subject to excessive infiltration/inflow, in accordance with § 35.927; and

(f) That the design for the project meets or exceeds such guidelines as the Administrator has published concerning treatment works design.

§ 35.925-8 Environmental review.

That the applicant has complied with applicable NEPA requirements (Part 6 of this chapter).

§ 35.925-9 Civil rights.

That the applicant has complied with the applicable requirements of title VI of the Civil Rights Act of 1964.

§ 35.925-10 Operation and maintenance program.

That the applicant has made satisfactory provision for assuring proper and efficient operation and maintenance of the treatment works, including the employment of trained management and operations personnel.

§ 35.925-11 User charge system.

That, prior to award of any grant after March 1, 1973, for a project which includes the building and erection of a treatment works (Step 3) the applicant (a) has adopted or will adopt a system of charges to assure that each recipient of waste treatment service will pay its proportionate share of the costs of operation and maintenance (including replacement); (b) has received firm written commitments satisfactory to the Regional Administrator for the payment to such applicant by the industrial users for their proportionate share of the Federal share of capital costs of the project allocable to the treatment of such industrial wastes to the extent attributable to the Federal share of the cost of construction; and (c) has legal, institutional, managerial, and financial capability to insure adequate construction, operation and maintenance of treatment works throughout the applicant's jurisdiction. Grants awarded prior to March 2, 1973, are subject to § 35.835-5 requirements in lieu of the above.

§ 35.925-12 Sewage collection systems.

That, if the project is for, or includes, sewage collection system work, such work is for replacement or major rehabilitation of an existing sewer system and is necessary to the total integrity and performance of the waste treatment works servicing such community, or is for a new sewer system in a community in existence on October 18, 1972, with sufficient existing or planned capacity to adequately treat such collected sewage.

§ 35.925-13 Alternative techniques and technology.

That, for grants made from fiscal year 1975 or later funds, for the erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, the applicant (a) has studied and evaluated alternative waste management techniques to insure that the proposed works will provide for the application of the best practicable waste treatment technology over the life of the works; and (b) has, as appropriate, taken into account and allowed to the extent practicable for the application of technology, at a later date, which will provide for the reclaiming or recycling of water or otherwise eliminate the discharge of pollutants.

§ 35.927 Sewer system evaluation.

Applicants for grants awarded after July 1, 1973, must demonstrate to the satisfaction of the Regional Administrator that each sewer system discharging into such treatment works is not subject to excessive infiltration/inflow, through an infiltration/inflow analysis and where appropriate and approved by the Regional Administrator, a sewer system evaluation survey.

(a) *Infiltration/inflow analysis.* Each applicant for a grant must show that it has performed or will perform, in conjunction with preliminary plans and studies (Step 1), and analysis demonstrating the existence or nonexistence of excessive infiltration/inflow in each sewer system tributary to the treatment works. The analysis shall identify the presence, quantity, and type of infiltration/inflow conditions which exist in the sewer systems. Information to be obtained and evaluated in the analysis shall include but not necessarily be limited to the following:

(1) Flow data for all flows in the sewer system including overflows and bypassed flows.

(2) Location, frequency, and cause of overflow conditions in the collection/treatment system caused by infiltration/inflow.

(3) Relationships of existing population and industrial contribution to flows in the sewer system.

(4) Geographical and geological conditions which may affect the present and future quantities or correction costs of the infiltration/inflow.

(5) A general discussion of age, length, type, materials of construction, and known physical condition of the sewer system.

For determination of possible excessive infiltration/inflow in the analysis, preliminary estimates shall be developed of the relative costs (for the design life of the treatment works), both for correcting the infiltration/inflow conditions, and increasing the treatment works capacity to provide the required degree of waste water treatment for the quantities of infiltration/inflow.

(b) *Sewer system evaluation survey.* If the infiltration/inflow analysis demonstrates that the sewer system may be subject to excessive infiltration/inflow, the analysis and a detailed plan for a systematic sewer system evaluation survey, which elucidates the tasks to be performed and the estimated costs, shall be submitted to the Regional Administrator.

(1) Upon approval of the survey proposal by the Regional Administrator, the grantee shall conduct the sewer system evaluation survey, which shall be a systematic examination of the sewer systems to determine the location, flow rate and cost of correction for each definable element of the total infiltration/inflow problem. The sewer system evaluation survey shall normally be completed prior to establishment of facility design data for the engineering report. The evaluation survey shall be conducted in accordance with such guidelines as the Administrator shall publish from time to time.

(2) The sewer system evaluation survey report shall state the specific location, condition, estimate of rate of flow and cost of rehabilitation for each defined element of infiltration/inflow

into the sewer system. The report shall summarize the quantities of defined infiltration/inflow and propose a program of rehabilitation to correct the excessive infiltration/inflow. The rehabilitation program for the sewer system shall be accomplished on a selective cost-effective basis for each defined element of infiltration/inflow.

(3) The sewer system evaluation survey report and rehabilitation program for the sewer system shall be submitted to the Regional Administrator for approval prior to initiation of construction for Step 3.

(c) *Sewer use ordinance.* Each applicant for a treatment works grant shall demonstrate to the satisfaction of the Regional Administrator that a sewer use ordinance or other legally binding requirement shall be enacted and enforced in each jurisdiction served by the treatment works before the completion of construction. The ordinance shall prohibit any new connections from inflow sources into the sanitary sewer portions of the sewer system and shall require that new sewers and connections from waste water sources to the sewer system are designed and constructed in accordance with such guidelines as the Administrator may publish from time to time.

(d) *Force account and survey equipment costs.* Reasonable force account and equipment purchases or rental costs for all or part of a sewer system evaluation survey conducted by an applicant in accordance with § 35.927(b) will be allowable costs if the Regional Administrator has given prior approval for the use of such forces and equipment.

(1) The applicant must demonstrate to the satisfaction of the Regional Administrator the necessary technical competence required to conduct all or part of the evaluation survey. The applicant must also demonstrate that the use of force account and purchased or rented survey equipment will be the most economical method of conducting the evaluation survey.

§ 35.928 User charge system. [Reserved]

§ 35.930 Grant award.

Approval by the Regional Administrator of an application shall constitute a grant award for the project, and shall constitute a contractual obligation of the United States for the payment of the Federal share of the allowable project costs, as determined by the Regional Administrator, subject to execution of a grant agreement in accordance with § 30.305-2.

§ 35.930-1 Types of grants.

(a) The Regional Administrator may award a grant for the following types of projects pursuant to § 35.925:

(1) Preliminary plans and studies (Step 1): *Provided*, That he determines that the applicant has submitted the items required pursuant to § 35.920-3(a) and the State agency has determined that the applicant is unable to complete the necessary preliminary plans and studies without Federal assistance;

(2) Preparation of construction drawings and specifications (Step 2): *Provided*, That he determines that the applicant has satisfactorily completed appropriate preliminary plans and studies and has submitted the items required pursuant to § 35.920-3(b);

(3) Building and erection of a treatment works (Step 3): *Provided*, That he determines that the applicant has satisfactorily completed appropriate preliminary plans and studies and has submitted the items required pursuant to § 35.920-3(c); or

(4) A combination of design (Step 2)
920-(c); or
and construction (Step 3) for a treatment works in the case of grants awarded after March 1, 1973:

(i) Where the Regional Administrator determines that compelling water quality enforcement considerations or serious public health problems warrant award of such a grant to assure expeditious construction of such treatment works, or

(ii) Where the Regional Administrator determines that award of such a grant will minimize administrative requirements in the case of projects not requiring a substantial amount of Federal assistance:

Provided, That the Regional Administrator determines that the applicant has satisfactorily completed appropriate preliminary plans and studies and has submitted the items required pursuant to § 35.920-3(b): *And further provided*, That any such grant award may be annulled unless detailed construction drawings and specifications are submitted to the Regional Administrator and approved prior to initiation of construction for the building and erection of the Project (Step 3).

(5) Design/construction of treatment works (Steps 2 and 3), *Provided*, That he determines that the applicant has satisfactorily completed appropriate preliminary plans and studies and has submitted the items required pursuant to § 35.920-3(d): *And further provided*, That any such grant award is subject to submission of detailed construction drawings and specifications to the Regional Administrator prior to initiation of and during construction.

§ 35.930-2 Grant amount.

The amount of a grant shall be set forth in the grant agreement and may not exceed the amount of funds available from the State allotments and reallotments pursuant to § 35.910 and may not exceed the amount certified by the State agency in accordance with § 35.915. Grant payments will be limited to the Federal share of allowable project costs incurred within the grant amount or any increases in such amount effected through grant amendments in accordance with § 35.955, pursuant to the negotiated payment schedule included in this grant agreement.

§ 35.930-3 Grant term.

The grant agreement shall establish the period within which the project must be completed, in accordance with § 30.305-1 of this chapter, subject to excusable delay.

§ 35.930-4 Project scope.

The grant agreement must define the scope of the project for which Federal assistance is awarded under the grant. The grant agreement shall define the project as the construction of an identified complete treatment works.

§ 35.930-5 Grant percentage.

The amount of any grant awarded under this subpart shall be 75 percent of the allowable cost of the project.

§ 35.935 Grant conditions.

In addition to the EPA General Grant Conditions (Appendix A to Subchapter B of this title and Part 30, Subpart C of this chapter), each grant for treatment works involving building and erection (Step 3) shall be subject to the following conditions:

§ 35.935-1 Nonrestrictive specifications.

No specification for bids or statement of work in connection with such works shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal."

§ 35.935-2 Procurement.

Construction work will be performed by the fixed-price (lump sum) or fixed-rate (unit price) method, or a combination of these two methods, unless the Regional Administrator gives advance written approval to use some other method of contracting. The cost-plus-a percentage of cost method of contracting shall not be used. Adequate methods of advertising for and obtaining competitive sealed bids will be employed prior to award of the construction contract. The award of the contract will be made to the responsible bidder submitting the lowest responsive bid, which shall be determined without regard to State or local law whereby preference is given on factors other than the specification requirements and the amount of bid. The grantee must promptly transmit to the Regional Administrator copies of bid protests, decisions on such protests, and related correspondence. The Regional Administrator will cause appropriate review of grantee procurement methods to be made.

§ 35.935-3 Bonding and insurance.

On contracts for the building and erection of treatment works (Step 3) exceeding $100,000, each bidder must furnish a bid guarantee equivalent to 5 percent of the bid price. In addition, the contractor awarded either a design/construct contract or a construction contract for Step 3 must furnish performance and payment bonds, each of which shall be in an amount not less than 100 percent of the contract price and shall remain in effect for 1 year beyond the date of the final inspection and acceptance of the treatment works. Construction contracts less than $100,000 shall be subject to State and local requirements relating to bid guarantees, performance bonds, and payment bonds. In all cases, the contractor must maintain adequate fire and extended coverage, where appropriate, workmen's compensation, public liability and property damage, and "all-risk" builders risk insurance (including blasting, where appropriate) during the construction phase of the contract.

§ 35.935–4 State and local laws.

The construction of the project, including the letting of contracts in connection therewith, shall conform to the applicable requirements of State, territorial, and local laws and ordinances to the extent that such requirements do not conflict with Federal laws and this Subchapter.

§ 35.935–5 Davis-Bacon and related statutes.

The grantee must consult with the Regional Administrator prior to issuance of invitation for bids concerning compliance with Davis-Bacon and related statutes required pursuant to § 30.403 (a), (b), and (c) of this chapter.

§ 35.935–6 Equal employment opportunity.

Generall, contracts involving Step 3, of $10,000 and above, are subject to equal employment opportunity requirements under Executive Order 11246, including rules, regulations and orders issued thereunder. The grantee must consult with the Regional Administrator concerning equal employment opportunity requirements prior to issuance of invitation for bids where the cost of construction work is estimated to be more than $1,000,000, or where required by the grant agreement.

§ 35.935–7 Access.

Any construction contract must provide that representatives of the Environmental Protection Agency and the State will have access to the work whenever it is in preparation or progress and that the contractor will provide proper facilities for such access and inspection. The contract must also provide that the Grants Officer, the Comptroller General of the United States, or any authorized representative shall have access to any books, documents, papers, and records of the contractor which are pertinent to the project for the purpose of making audit, examination, excerpts, and transcriptions thereof.

§ 35.935–8 Supervision.

The grantee will provide and maintain competent and adequate engineering supervision and inspection of the project to insure that the construction conforms with the approved plans and specifications.

§ 35.935–9 Project completion.

The grantee agrees to expeditiously construct and complete the project or cause it to be constructed and completed in accordance with the grant agreement and plans and specifications approved by the Regional Administrator.

§ 35.935–10 Copies of contract documents.

In addition to the notification of project changes pursuant to § 30.900–1 of this chapter, a copy of any construction contract or modification thereof (including subcontracts) and of revisions to plans and specifications must be promptly submitted to the Regional Administrator.

§ 35.935–11 Project changes.

In addition to the notification of project changes required pursuant to § 30.-900–1 of this chapter, prior approval by the Regional Administrator and the State agency is required for project changes which may (a) substantially alter the design and scope of the project, (b) alter the type of treatment to be provided, (c) substantially alter the location, size, capacity, or quality of any major item of equipment; or (d) increase the amount of Federal funds needed to complete the project: *Provided*, That prior EPA approval is not required for changes to correct minor errors, minor changes, or emergency changes. No approval of a project change pursuant to § 30.900 of this chapter or this section shall commit or obligate the United States to any increase in the amount of the grant or payments thereunder unless an approved request has been made. The preceding sentence shall not preclude submission or consideration of a request for a grant amendment pursuant to § 30.901 of this chapter.

§ 35.935–12 Operation and maintenance.

The grantee agrees that the treatment works will be maintained and operated in accordance with such requirements as the Administrator may publish from time to time and in accordance with appropriate methods, techniques, and practices for economic, efficient, effective maintenance and operation of such treatment works consistent with the design of such works, including, but not limited to, (a) an operation and maintenance manual for each facility, (b) an emergency operating and response program, (c) properly trained management, operations and maintenance personnel, (d) adequate budget for operation and maintenance, (e) operational reports, and (f) provisions for laboratory testing adequate to determine influent and effluent characteristics and removal efficiencies.

§ 35.910 Determination of allowable costs.

The grantee will be reimbursed, upon request, in accordance with § 35.945, for the Federal share of all necessary costs within the scope of the approved project and determined to be allowable in accordance with § 30.701 of this chapter, this subpart, and the grant agreement.

§ 35.910–1 Allowable project costs.

Allocable project costs of the grantee which are reasonable and necessary are allowable. Necessary costs may include, but are not limited to:

(a) Costs of salaries, benefits, and expendable material incurred by the grantee.

(b) Costs under construction contracts.

(c) Professional and consultant services.

(d) Facility planning directly related to the treatment works.

(e) Sewer system evaluation (§ 35.927).

(f) Project feasibility and engineering reports (§ 35.920–3(b) (3) and (4)).

(g) Relocation and land acquisition costs required pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4621 et seq., 4651 et seq., and regulations issued thereunder, Part 4 of this chapter.

(h) Environmental assessment (§ 35.-920–3(b) (9)), including costs of public notices and hearings.

(i) Preparation of construction drawings, specifications, estimates, and construction contract documents.

(j) Landscaping.

(k) Supervision of construction work.

(l) Removal and relocation or replacement of utilities, for which the grantee is legally obligated.

(m) Materials acquired, consumed, or expended specifically for the project.

(n) A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations.

(o) Development and preparation of an operation and maintenance manual.

(p) Project identification signs (§ 30.604–4 of this chapter).

§ 35.910–2 Unallowable costs.

Costs which are not necessary for the construction of a treatment works project are unallowable. Such costs include, but are not limited to:

(a) Basin or areawide planning not directly related to the project;

(b) Bonus payments not legally required for completion of construction in advance of a contractual completion date;

(c) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise;

(d) Fines and penalties resulting from violations of, or failure to comply with, Federal, State, or local laws;

(e) Costs outside the scope of the approved project;

(f) Interest on bonds or any other form of indebtedness required to finance the grantee's share of project costs;

(g) Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney, except as provided in § 35.940–4;

(h) Site acquisition (for example, sewer rights-of-way, sewer treatment plant sites, sanitary landfills and sludge disposal areas), except as otherwise provided in § 35.940-3(a).

§ 35.940-3 Costs allowable, if approved.

Certain direct costs are sometimes necessary for the construction of a treatment works and are allowable if reasonable and approved by the Regional Administrator in the grant agreement or a grant amendment. Such costs include, but are not limited to:

(a) Land acquired after October 17, 1972, that will be an integral part of the treatment process or that will be used for ultimate disposal of residues resulting from such treatment (for example, land for spray irrigation of sewage effluent).

(b) Acquisition of an operable portion of a treatment works.

(c) Rate determinations studies required pursuant to § 35.925-11.

§ 35.940-4 Indirect costs.

Indirect costs of the grantee shall be allowable in accordance with an indirect cost agreement negotiated and incorporated in the grant agreement. An indirect cost agreement must identify those cost elements allowable pursuant to § 35.-940-1. Where the benefits derived from a grantee's indirect services cannot be readily determined, a lump sum for overhead may be negotiated based upon a determination that such amount will be approximately the same as the actual indirect costs that may be incurred.

§ 35.940-5 Disputes.

The grantee should seek to resolve any questions relating to cost allowability or allocation at its earliest opportunity (if possible, prior to execution of the grant agreement). Final determinations concerning the allowability of costs shall be conclusive unless appealed within 30 days in accordance with the "Disputes" article (Article 7) of the EPA General Grant Conditions (Appendix A, Subchapter B of this title).

§ 35.945 Grant payments.

The grantee shall be paid on a reimbursable basis for the Federal share of allowable costs incurred within the scope of an approved project: *Provided*, That such payments may not exceed the payment schedule and the grant amount set forth in the grant agreement and any amendments thereto.

(a) *Initial payment*. Upon award of a grant, the grantee may request payment for the unpaid Federal share of allowable project costs, e.g., preliminary plans and studies, sewer system evaluations, or preparation of final construction drawings and specifications.

(b) *Interim payments*. The grantee may submit requests for payment for allowable costs incurred in accordance with the negotiated payment schedule included in the grant agreement. Upon receipt of a request for payment, the Regional Administrator shall cause to be disbursed from available appropriated funds such amounts as are necessary so that the total amount of Federal payments to the grantee for the project is equal to the Federal share of the actual or estimated allowable project costs incurred to date, as certified by the grantee in its most recent request for payment.

(c) *Adjustment*. At any time or times prior to final payment under the grant, the Regional Administrator may cause any request(s) for payment to be reviewed or audited. Each payment theretofore made shall be subject to reduction for amounts included in the related request for payment which are found, on the basis of such review or audit, not to constitute allowable costs. Any payment may be reduced for overpayments or increased for underpayments on preceding requests for payment.

(d) *Refund, rebates, credits, etc*. The Federal share of any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the grantee with respect to the project, to the extent that they are properly allocable to costs for which the grantee has been paid under a grant, must be credited to the current State allotment or paid to the United States. Reasonable expenses incurred by the grantee for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable under the grant when approved by the Regional Administrator.

(e) *Final payment*. On receipt and approval of the request for payment designated by the grantee as the "final payment request" and upon compliance by the grantee with all applicable requirements of this part (including paragraph (d) of this section) and the grant agreement, the Regional Administrator shall cause to be disbursed to the grantee any balance of allowable cost which has not been paid to the grantee. The final payment request must be submitted by the grantee promptly following completion of the project work but in no event later than 1 year (or such longer period as the Regional Administrator may in his discretion approve in writing) from the date of such completion. Prior to final payment under the grant, the grantee must execute and deliver an assignment to the United States, in form and substance satisfactory to the Regional Administrator, of the Federal share of refunds, rebates, credits or other amounts (including any interest thereon) properly allocable to costs for which the grantee has been paid by the Government under the grant, and a release discharging the United States, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project or under the grant, subject only to such exceptions which may be specified in the release.

§ 35.950 Suspension or termination of grants.

Grants may be suspended, in accordance with § 30.902 of this chapter and Article 4 of the General Grant Conditions (Appendix A to Subchapter B of this title), or terminated, in accordance with § 30.903 of this chapter and Article 5 of the General Grant Conditions (Appendix A to Subchapter B of this title): *Provided*, That the State agency shall be concurrently notified in writing of any such suspension or termination action.

§ 35.955 Grant amendments to increase grant amounts.

Grant agreements may be amended in accordance with § 30.901 of this chapter with respect to project changes which have been approved in accordance with § 30.900 of this chapter: *Provided*, That no grant agreement may be amended to increase the amount of a grant unless the State agency has issued a priority certification for the grant increase from available State allotments and reallotments in accordance with § 35.915.

[FR Doc.73-3750 Filed 2-27-73;8:45 am]

SUBCHAPTER E—PESTICIDES PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Cycloheximide

A petition (PP 2F1252) was filed by The Upjohn Co., Kalamazoo, Mich. 49001, proposing establishment of a tolerance (40 CFR Part 180) for residues of the plant regulator cycloheximide (3-[2-(3, 5-dimethyl - 2 - oxocyclohexyl) - 2 - hydroxyethyl]glutarimide) in or on the raw agricultural commodity oranges at 0.05 part per million.

Subsequently, the petitioner amended the petition by increasing the proposed tolerance on oranges to 0.1 part per million.

Based on consideration given data submitted in the petition and other relevant material, it is concluded that:

1. The plant regulator is useful for the purpose for which the tolerance is being established.
2. There is no reasonable expectation of residues in eggs, meat, milk, or poultry, and § 180.6(a)(3) applies.
3. The tolerance established by this order will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (36 FR 9038), Part 180 is amended by adding the following new section to Subpart C:

§ 180.336 Cycloheximide; tolerances for residues.

A tolerance of 0.1 part per million is established for residues of the plant regulator cycloheximide (3-[2-(3,5-dimethyl-2-oxocyclohexyl) - 2 - hydroxyethyl]glutarimide) in or on the raw agricultural commodity oranges.

Any person who will be adversely affected by the foregoing order may at any time on or before March 30, 1973, file with the Hearing Clerk, Environmental Protection Agency, Room 3902A, Fourth and M Streets SW., Waterside Mall, Washington, DC 20460, written objections thereto in quintuplicate. Objections shall

federal register

WEDNESDAY, JANUARY 17, 1973
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PART II

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APPENDIX E

ENVIRONMENTAL PROTECTION AGENCY

■

PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS

Interim Regulation

Title 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency

PART 6—PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS

Interim Regulations

The National Environmental Policy Act of 1969, implemented by Executive Order 11514 and the Council on Environmental Quality's Guidelines of April 23, 1971, requires that all agencies of the Federal Government prepare detailed environmental statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The objective of the Act is to build into the Agency decisionmaking process an appropriate and careful consideration of all environmental aspects of proposed actions.

On January 20, 1972 (37 FR 879), the Environmental Protection Agency published as proposed rule making a new part 6 establishing agency policy and procedures for the identification and analysis of the environmental impact of agency actions, and the preparation and processing of environmental impact statements when significant impacts on the environment are anticipated. The proposed part 6 was a summary of the Agency's procedures.

As a result of public comment on the summary, the Agency has revised its procedures and is now publishing them in their entirety as an interim regulation. Because the public has not seen the complete procedures and because of the significant changes made, we are again inviting public comment. Final regulations will be published after receipt and consideration of the comments.

Environmentally protective regulatory activities have been specifically excluded from this interim regulation pending the outcome of certain judicial appeals and an internal EPA study of its regulatory activities.

The Environmental Protection Agency invites all interested persons who desire to submit written comments or suggestions concerning the preparation of final regulations to do so in triplicate to the Office of Federal Activities, Environmental Protection Agency, Washington, DC 20460. Such submissions should be received by April 15, 1973, to allow time for appropriate consideration and possible inclusion in the final regulations. Copies of the submissions will be available for examination by interested persons in the Public Information Office, Room W329, Waterside Mall, Fourth and M Streets, SW., Washington, DC.

Effective date. This regulation will become effective February 16, 1973.

Dated: January 10, 1973.

Robert W. Fri,
Acting Administrator.

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3 News Release Suggested Format.
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8 Flowchart for OR&M.
9 Flowchart for OSWMP.

Authority: Secs. 102, 103, 83 Stat. 854.

Subpart A—General

§ 6.10 Purpose and policy.

(a) The National Environmental Policy Act of 1969, implemented by Executive Order 11514 and the Council on Environmental Quality's Guidelines of April 23, 1971 (36 FR 7724), requires that all agencies of the Federal Government prepare detailed environmental statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The objective of the Act is to build into the agency decisionmaking process an appropriate and careful consideration of all environmental aspects of proposed actions.

(b) This part establishes Environmental Protection Agency policy and procedures for the identification and analysis of the environmental impact of Agency actions, and the preparation and processing of environmental impact statements when significant impacts on the environment are anticipated.

§ 6.11 Definitions.

(a) "Environmental assessment" is a written analysis submitted to the Agency by its grantees or contractors describing the environmental impacts of actions undertaken with the financial support of the Agency.

(b) "Environmental review" is a formal evaluation undertaken by the Agency to determine whether a proposed Agency action may have a significant impact on the environment.

(c) "Notice of intent" is a memorandum announcing to Federal, State, and local agencies, and to interested persons, that a draft environmental impact statement will be prepared and processed.

(d) "Environmental impact statement" is a report, prepared by the Agency, which identifies and analyzes in detail the environmental impacts of an Agency action.

(e) "Negative declaration" is a written announcement, prepared subsequent to the environmental review, which states the Agency has decided not to prepare an environmental impact statement.

(f) "Environmental impact appraisal" is an abbreviated document, based on an environmental review, which supports a negative declaration. It describes a proposed Agency action, its expected environmental impact, and the basis for the conclusion that no significant impact is anticipated.

(g) "Responsible official" will usually be either a Regional Administrator or a Deputy Assistant Administrator. He is responsible for assuring that environmental reviews are conducted and, if necessary, that environmental impact statements and other associated documents are prepared. "Responsible officials" are identified for the various Agency program offices in the subparts following Subpart D.

(h) "Interested persons" are individuals, groups, organizations, corporations, or other nongovernmental units, including an applicant for an Agency contract or grant and conservation groups, who may be interested in, affected by, or technically competent to comment on the environmental impact of the proposed Agency action.

§ 6.12 Summary of the environmental impact statement process.

(a) Environmental review. An environmental review shall be made of proposed and certain ongoing actions (as required in § 6.13(c)) of the Environmental Protection Agency. This process shall consist of a study of the program or project, identifying and evaluating the expected and potential environmental impacts of the action. The purpose of this review is to determine whether any significant impacts are anticipated and if an environmental impact statement is required. The Agency has overall responsibility for this review, although its grantees and contractors will contribute to the review through environmental assessments they have submitted. (Types of grants, contracts, and other actions requiring such assessments are specified in the subparts following Subpart D of this part.)

(b) Notice of intent and impact statements. Where the environmental review indicates significant environmental impacts, a notice of intent shall be published, and a draft environmental impact statement shall be prepared and distributed. After external coordination and evaluation of the comments received, a final environmental impact statement shall be prepared and distributed.

(c) Negative declaration and environmental impact appraisal. When the environmental review does not indicate any significant impacts, a negative declaration to this effect shall be issued. For the cases specified in the subparts following Subpart D of this part, an environmental impact appraisal shall be prepared, which summarizes the impacts, alternatives, and the reasons an impact statement was not prepared. It shall remain on file and shall be available for public inspection.

(d) The environmental impact statement process is shown graphically in Exhibit 1.

§ 6.13 Applicability.

(a) *Actions covered.* This part applies to:

(1) All Agency legislative proposals;

(2) Favorable reports on legislation initiated elsewhere and not accompanied by an impact statement, provided it is not excluded in paragraph (b)(4) and (5) of this section;

(3) Direct Agency activities;

(4) Activities of its grantees and contractors that are financially supported in whole or in part by the Agency, except as noted in paragraph (b) of this section.

(b) *Actions excluded.* The following Agency actions are not subject to the requirements of this part:

(1) Administrative procurements (e.g., general supplies);

(2) Contracts for consulting services;

(3) Personnel actions;

(4) Legislative proposals originating in another Agency;

(5) Legislative proposals not relating to or affecting the matters within EPA's primary areas of responsibility;

(6) Environmentally protective regulatory activities.

(c) *Retroactive application.* This regulation shall apply to uncompleted and continuing Agency actions initiated prior to the promulgation of these procedures when substantial funds have not been released and modifications of or alternatives to the Agency action are still available. An environmental impact statement shall be prepared for each project found to have significant environmental consequences, as determined in accordance with § 6.20.

(d) *Application to legislative proposals.* Except as noted in paragraphs (b)(4) and (5) of this section, environmental impact statements shall be prepared for legislative proposals or favorable reports relating to legislation. Because of the nature of the legislative process, impact statements for legislation must be prepared and reviewed in accordance with the procedures followed in the development and review of the legislative matter. These procedures are described in Office of Management and Budget Circular No. A–19; separate procedures, therefore, have not been provided in this part. Where appropriate, legislative statements will contain the information required in § 6.32.

(e) *Application to annual budget estimates.* An annual listing of those Agency actions which will require the preparation of environmental impact statements shall be compiled each year as specified in Office of Management and Budget Bulletin No. 72–6. Agency components shall submit with their budget estimates a listing of those projects for which they expect to prepare impact statements. Applicable portions of Subpart B of this part shall be utilized to review projects to determine if they will have a significant impact.

§ 6.14 General responsibilities.

(a) *Responsible official.* (1) Requires contractors and grantees to submit environmental assessments and assures environmental reviews are conducted on proposed Agency projects at the earliest practicable point in the Agency's project formulation process.

(2) When required, assures that draft statements are prepared and distributed at the earliest practicable point in the Agency's project formulation process, their internal and external review is coordinated, and final statements are prepared and distributed.

(3) When an impact statement is not prepared, assures that negative declarations and environmental appraisals are prepared and distributed for those actions requiring them.

(b) *Office of Federal Activities.* (1) Provides Agencywide policy guidance and assures that Agency components establish and maintain adequate administrative procedures to comply with this part.

(2) Monitors the overall timeliness and quality of the Agency effort to comply with this part.

(3) Provides assistance to "responsible officials" as required.

(4) Coordinates the training of personnel involved in the review and preparation of environmental impact statements.

(5) Acts as Agency liaison with the Council on Environmental Quality and other Federal and State entities on matters of Agency policy and administrative mechanisms to facilitate external review of Agency environmental impact statements, to determine lead Agency, and to improve the uniformity of the NEPA procedures of Federal agencies.

(6) Advises the Administrator and Deputy Administrator on projects which involve more than one Agency component, are highly controversial, are nationally significant, or "pioneer" Agency policy, when these projects have had or should have an environmental impact statement prepared on them.

(c) *Office of Public Affairs.* (1) Assists the Office of Federal Activities and "responsible officials" by answering the public's queries on the impact statement process and on specific impact statements, and by directing requests for copies of specific documents to the appropriate regional office or program.

(2) Analyzes the present procedures for public participation, and develops and recommends to the Office of Federal Activities a program to improve those procedures and increase public participation.

(d) *Regional Office Division of Public Affairs.* (1) Assists the "responsible official" or his designee on matters pertaining to negative declarations, notices of intent, press releases, and other public notification procedures.

(2) Assists the responsible official or his designee by answering the public's queries on the impact statement process and on specific impact statements, and by filling requests for copies of specific documents.

(e) *Office of Legislation*. Provides the necessary liaison with Congress.

(f) *Offices of the Assistant Administrators and Regional Administrators.* (1) Provide specific policy guidance to their respective offices and assure that those offices establish and maintain adequate administrative procedures to comply with this part.

(2) Monitor the overall timeliness and quality of their respective component's efforts to comply with this part.

(3) Act as liaison between their components and the Office of Federal Activities and between their components and other Assistant Administrators or Regional Administrators on matters of agencywide policy and procedures.

(4) Advise the Administrator and Deputy Administrator, through the Office of Federal Activities, on projects or activities within their respective areas of responsibility which involve more than one Agency component, are highly controversial, are nationally significant or "pioneer" Agency policy, when these projects have had or should have an environmental impact statement prepared on them.

(g) *Budget Operations Division, Office of Resources Management.* The Budget Operations Division, Office of Resources Management, prepares from the submission of Agency components a listing of those Agency actions, covered by the budget estimates, which will require the preparation of environmental impact statements, as specified in Office of Management and Budget Bulletin No. 72-6 (see § 6.13(e)).

(h) *The Office of Legislation.* The Office of Legislation coordinates the preparation of impact statements required on legislative proposals or reports on legislation (see § 6.13(d)).

§ 6.15 Timing for proposed Agency actions on which impact statements are to be prepared.

(a) Except when requested by the "responsible official" in writing and approved by the Council on Environmental Quality, no administrative action shall be taken sooner than ninety (90) calendar days after a draft statement has been distributed or sooner than thirty (30) calendar days after the final statement has been distributed. If the final statement is filed within ninety (90) calendar days after the draft statement has been circulated and made public, the thirty (30) day period and ninety (90) day period may run concurrently to the extent that they overlap.

(b) Administrative action shall be interpreted as an Agency award of a grant or contract, or actual physical commencement of a project or activity undertaken with inhouse funds (intramural project).

Subpart B—Procedures

§ 6.20 Guidelines for determining when to prepare an impact statement.

The following general guidelines shall be used when reviewing an Agency action to determine if it will have a significant impact on the environment and therefore require an impact statement.

(a) *Significant environmental effects.* (1) Actions having both beneficial and detrimental effects may be classified as having significant effects on the environment even if, on balance, the Agency believes that the net effect will be beneficial. Impact statements should be prepared first on those proposed actions with the most adverse effects.

(2) Significant effects should include both primary and secondary consequences of short term and long term duration. Secondary consequences result from activities encouraged or induced by the Agency action. Long term effects should be given particular attention in the determination of significant effects.

(3) The total expected environmental impact of precedent-setting actions and individually small but cumulatively large actions shall be identified and considered fully. If the Agency is taking a number of minor, environmentally insignificant actions that are similar in execution and purpose, especially when they are taken during a limited time span and in the same general geographic area, the cumulative environmental impact of all of these actions may be significant.

(b) *Controversial actions.* An environmental impact statement shall be prepared and processed when the environmental impact of an Agency action is likely to be highly controversial.

§ 6.21 Environmental review.

(a) Proposed and certain ongoing Agency actions as specified in § 6.13(c) shall be subjected to an environmental review. This review shall be a continuing one and should commence at the earliest possible point in the development of the project. It shall consist of a study of the proposed program or project which identifies and evaluates the expected and potential environmental impacts of the action and alternatives to it. It will determine whether a significant impact is anticipated from the proposed action. The outcome of an environmental review will be either the preparation of an impact statement or preparation of a negative declaration.

(b) When making this determination, a general class of actions occurring within a common time frame may be treated as a single action if their individual environmental effects and alternatives are substantially similar.

(c) To assist the "responsible official" in reviewing the proposed action, applicants for a grant or contract may be required to submit with their original application an environmental assessment. The types of grants and contracts requiring such assessments are specified in the subparts following Subpart D of this part. The Agency may also request additional environmental data or analyses to supplement the assessment. Although the assessment and data may be utilized by the Agency in the preparation of an impact statement or environmental impact appraisal, responsibility for the technical accuracy of such information rests with the Agency.

§ 6.22 Notice of intent.

(a) *General.* (1) When an environmental review indicates a significant impact will occur, a notice of intent, announcing the preparation of a draft impact statement, shall be issued by the "responsible official." The notice shall briefly describe the Agency action, its location and the issues involved (see Exhibit 2). Such a notice should be submitted immediately after completion of an environmental review that indicates a significant impact. Notices of intent should be sent to interested persons who might be interested in receiving a copy of an impact statement. Those who request a copy of a particular draft impact statement will be sent one at the same time as those interested persons who are routinely sent copies of all impact statements.

(2) The purpose of a notice of intent is to involve other Government agencies and interested persons as early as possible in the planning and evaluation of Agency actions which embody significant environmental impacts. This device should facilitate coordination during the preparation of a draft impact statement and assure that environmental values will be identified and weighed from the outset, rather than accommodated by adjustments at the end of the decision-making process.

(b) *Specific actions.* The specific actions that should be taken with respect to notices of intent are as follows:

(1) When the review process indicates there will be a significant impact, prepare a notice of intent as soon as practicable.

(2) Forward copies of the notice of intent to:

(i) The appropriate State and local agencies and to the appropriate State, regional, and metropolitan clearinghouses.

(ii) Potentially interested persons.

(iii) The Office of Federal Activities and to the Office of Public Affairs.

(iv) The Headquarters impact statement coordinator for the program office originating the statement. When the originating office is a regional office and the action is related to water quality management, the copies should be forwarded to the Water Quality and Nonpoint Source Control Division, Office of Water Programs Operations.

(v) The Office of Legislation so they will be able to answer any queries from Congress on the matter.

(3) Submit to a local newspaper which has adequate circulation to cover the area that will be affected by the project, a brief news release (see Exhibit 3) informing the public that an impact statement will be prepared on a particular project. News releases may be submitted to other media as appropriate.

(c) *Regional office assistance to program offices.* Regional offices will provide assistance to program offices in taking these specific actions when the statement orginates in a program office.

§ 6.23 Draft impact statements.

(a) *General.* (1) The "responsible official" shall assure that a draft environmental impact statement is prepared as soon as practicable after the release of the notice of intent. Prior to release to CEQ, the draft statement may be circulated for review to other offices within the Agency with collateral interest in or technical expertise related to the action. Afterwards, the draft statement shall be sent to CEQ and circulated to Federal, State, and local agencies with special expertise or jurisdiction by law, and to interested persons. If the responsible official determines that a public hearing on the project is warranted, the hearing will be held after preparation of the draft statement and in accordance with the requirements of § 6.41. Comments from both the hearing and written replies shall be incorporated in the final environmental impact statement.

(2) Draft impact statements should be prepared at the earliest practicable point in the project development. Where a plan or program has been developed by the Agency or submitted to the Agency for approval, the relationship between the plan and the subsequent projects encompassed by it shall be evaluated to determine the preferable and most meaningful point in time for preparing an impact statement. Where practicable, an environmental impact statement will be drafted for the total program at the overall planning stage. Subsequently, component projects included in the plan will not require individual statements unless they deviate substantially from prior plans, or unless the plans do not provide sufficient detail to fully assess significant impacts of individual projects. Plans shall be reevaluated by the responsible official to monitor the cumulative impact of the component projects and to preclude the plans' obsolescence.

(b) *Specific actions.* The specific actions that should be taken with respect to draft impact statements are as follows:

(1) Before transmitting the draft statement to the Council on Environmental Quality, the "responsible official" shall:

(i) Notify by phone the Office of Federal Activities and the Headquarters impact statement coordinator for the program office originating the statement that a draft impact statement has been prepared. When the originating office is a regional office and the project is related to water quality management, the Regional Administrator will notify by phone the Office of Federal Activities and the Water Quality and Non-Point Source Control Division, Office of Water Programs Operations, that the draft impact statement has been prepared.

(ii) Send two (2) copies of the draft statement to each of the appropriate offices in paragraph (b)(1)(i) of this section.

(2) If neither of the above offices requests any changes within a ten (10) calendar day period after notification, the "responsible officials" shall:

(i) Send ten (10) copies of the draft environmental impact statement to the Council on Environmental Quality. Include with the copies two (2) completed National Technical Information Service (NTIS) accession notice cards (Form NTIS–79). One (1) card should have the return address of the Office of Federal Activities and the other the return address of the originating office. The Council on Environmental Quality will forward the necessary copies and cards to NTIS. Requests for copies can be filled by NTIS when the Agency has depleted its stock. (See § 6.43(b).)

(ii) Inform the Office of Public Affairs of the transmittal to the Council on Environmental Quality and the plans for local press release.

(iii) Notify the Office of Legislation of the transmittal so they will be able to answer any queries from Congress on the matter.

(iv) Provide copies of the draft statement to:

(*a*) The Office of Legislation if they request copies.

(*b*) The Office of Public Affairs. Provide two (2) copies.

(*c*) The appropriate field offices of reviewing Federal agencies that have special expertise or jurisdiction by law with respect to any impacts involved. The Council on Environmental Quality's Guidelines (section 7 and Appendixes II–III thereof) specify those agencies to which draft statements will be sent for official review and comment. Two (2) copies of the impact statement should be provided each field office. The field offices are expected to reply directly to the originating Agency office. Commenting agencies shall have at least thirty (30) calendar days to reply (the reply period shall commence from the date of receipt of the statement by the Council on Environmental Quality as noted in the Council's FEDERAL REGISTER and *102 Monitor* announcements); afterwards, it shall be presumed that, unless a time extension has been requested, the Agency has no comment to make. EPA will grant extensions where practical, not to exceed fifteen (15) calendar days.

(*d*) The appropriate State and local agencies and to the appropriate State and metropolitan clearinghouses. The time limits for review and comment shall be the same as those available to Federal agencies.

(*e*) Interested persons. The time limits for review and comment shall be the same as those available to Federal agencies.

(v) Submit to the local newspapers and other appropriate media a news release (see Exhibit 3) that the draft statement is available for comment and where copies may be obtained.

(vi) Send two (2) copies of the summary sheet to the Office of Management and Budget, Organization and Management Systems Division.

(c) Regional office assistance to program office. If requested, regional offices will provide assistance to program offices in taking these specific actions when the impact statement originates in a program office.

§ 6.24 Final impact statements.

(a) Final statements shall respond to all written or recorded suggestions, criticisms, and comments raised through the review of the draft impact statement. Special care should be taken to respond fully to comments that are at variance with the Agency's position (see also § 6.32(g)).

(b) Distribution and other specific actions will be as specified for draft statements in § 6.23 (b) and (c), except that in the case of Federal and State agencies and interested persons, only those who responded to the draft statement will be sent a copy of the final statement.

§ 6.25 Negative declaration and environmental impact appraisals.

(a) *General.* When an environmental review indicates no significant impact, a negative declaration shall be prepared prior to taking action (see Exhibit 4). An environmental impact appraisal supporting the negative declaration shall be prepared for those cases specified in the subparts following Subpart D of this part, as determined by the "responsible official." The appraisal (see Exhibit 5) describes the proposed activity and its effects, and documents the reasons for concluding that there will be no significant impact. This appraisal shall remain with internal records for the activity or action, and shall be available for public inspection.

(b) *Specific actions.* The following specific actions should be taken on those projects on which both a negative declaration and appraisal were prepared. Circulation of a negative declaration on a project for which no appraisal is required is unnecessary.

(1) *Negative declaration.* (i) When the review process indicates that there will not be a significant impact, prepare a negative declaration as soon as practicable.

(ii) The negative declaration shall be distributed in the same fashion as the notice of intent, except that copies shall be sent only when practicable to interested persons.

(iii) Where practicable, submit to the local newspapers and other appropriate media a brief news release (see Exhibit 3) informing the public that an impact statement will not be prepared on a particular project.

(2) *Environmental impact appraisal.* (i) Have the appraisal available when the negative declaration is distributed.

(ii) Forward a copy to the Headquarters impact statement coordinator for the program office originating the statement. (Not applicable to regional offices.)

(iii) Have copies on file in the originating office for public inspection upon request.

Subpart C—Content of Environmental Impact Statements

§ 6.30 Cover sheet.

The cover sheet shall indicate the type of statement (draft or final), the official project name, the responsible Agency office, the date, and the signature of the responsible official. The format is shown in Exhibit 6.

§ 6.31 Summary sheet.

The summary sheet shall conform to the format prescribed in Appendix 1 of the April 23, 1971, Council on Environmental Quality's Guidelines. The format is shown in Exhibit 7.

§ 6.32 Body of statement.

The body of the impact statement shall contain seven sections. Each shall identify, develop, and analyze the pertinent issues. Impact statements shall not be justification documents for proposed Agency funding or actions. Rather, they shall be objective evaluations of actions and their alternatives in light of all environmental considerations. Environmental impact statements shall be prepared using a systematic, interdisciplinary approach. Statements shall incorporate all relevant analytical disciplines and shall provide meaningful and factual data, information, and analyses. The presentation should be simple and concise, yet include all facts necessary to permit independent evaluation and appraisal of the beneficial and adverse environmental effects of alternative actions. To the extent possible, statements shall not be drafted in a style which requires extensive scientific or technical expertise to comprehend and evaluate the environmental impact of an Agency action.

(a) *Description of the proposed action.* Describe the recommended or proposed action, its purpose, where it is located, its time setting, and its interrelationship with other projects or proposals. To prevent piecemeal decisionmaking, the project shall be described in as broad a context as possible. The relationship to other projects and proposals shall be discussed, including not only other Agency activities, but also those of other Governmental and private organizations. Development and population trends in the project area shall also be included. Maps, photos, and artist sketches should be incorporated where they help depict the environmental setting. If not enclosed, supporting references and documents should be identified. The statement should also indicate how such documents may be obtained.

(b) *Environmental impact of the proposed action.* (1) Describe the primary and secondary environmental impacts, both beneficial and adverse, anticipated from the action. The scope of the description shall include both short- and long-term impacts. It shall include specifics on the area, the resources involved, physical changes, alterations to ecological systems, and changes induced by the proposed action in population distribution, population concentration, the human use of land (including commercial and residential development), and other aspects of the resource base such as water and public services. The time frames in which these impacts are anticipated should be included as well.

(2) Remedial, protective, and mitigative measures which will be taken as part of the proposed action shall be identified. These measures to prevent, eliminate, reduce, or compensate for any environmentally detrimental aspect of the proposed action shall include those of the Agency and others, e.g., its contractors and grantees. Adverse impacts which cannot be substantially avoided will be considered in greater detail in the next section.

(c) *Adverse impacts which cannot be avoided should the proposal be implemented.* Describe the kinds and magnitudes of adverse impacts which cannot be reduced in severity or which can be reduced to an acceptable level but not eliminated. For those which cannot be reduced, their implications and the reasons why the action is being proposed, notwithstanding their effect, shall be described in detail. Where abatement measures can reduce adverse impacts to acceptable levels, the basis for considering these levels adequate and the effectiveness and costs of the abatement measures shall be specified. In particular, this analysis shall detail the aesthetically or culturally valuable surroundings, human health, standards of living, or environmental goals set forth in section 101(b) of the National Environmental Policy Act which would be sacrificed. Also, it shall describe the parties affected (including any minority communities) and any objections raised by them.

(d) *Alternatives to the proposed action.* Develop, describe, and objectively weigh alternatives to any proposed action which involves significant tradeoffs among the uses of available environmental resources. The analysis shall be structured in a manner which allows comparisons of: (1) Environmental and financial cost differences among equally effective alternatives, or (2) differences in effectiveness among equally costly alternatives. Where practicable, benefits and costs should be quantified or described qualitatively in a way which will aid in a more objective judgment of their value. Where such an analysis is prepared, it shall be appended to the statement. The analysis of different courses of action shall include alternatives capable of substantially reducing or eliminating any adverse impacts, even at the expense of reduced project objectives. The specific alternative of taking no action must always be evaluated. This analysis shall evaluate alternatives in such a manner that reviewers independently can judge their relative desirability. In addition, the reasons why the proposed action is believed by the Agency to be the best course of action shall be explained. On projects that will involve construction, alternative sites must be considered.

(e) *Relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.* Describe the cumulative and long-term effects of the proposed action which either significantly reduce or enhance the state of the environment for future generations. In particular, the desirability of Agency actions shall be weighed to guard against shortsighted foreclosure of future options or needs. Special attention shall be given to effects which narrow the range of beneficial uses of the environment or pose long-term risks to health or safety. Those who may financially profit or suffer losses from uses of natural resources that may result from the proposed project (especially land) shall be identified. In addition, the reasons the proposed action is believed by the Agency to be justified now, rather than reserving a long-term option for other alternatives, including no use, shall be explained.

(f) *Irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.* Describe the extent to which the proposed action curtails the diversity and range of beneficial uses of the environment. Uses of renewable and nonrenewable resources during the initial and continued phases of the action shall be specified. In this regard, construction and facility uses are basically irreversible since a large commitment of resources makes removal or nonuse thereafter unlikely. Such primary impacts and, particularly, secondary impacts (e.g., opening areas to further development) generally commit future generations to similar uses. Also, irreversible damage can result from environmental accidents associated with the action. Any irretrievable and significant commitments of resources shall be evaluated to assure that such current consumption is justified.

(g) *A discussion of problems and objections raised by other Federal, State, and local agencies and by interested persons in this review process.* Final statements (and draft statements if appropriate) shall summarize the comments and suggestions made by reviewing organizations and shall describe the disposition of issues surfaced (e.g., revisions to the proposed action to mitigate anticipated impacts or objections). In particular, they shall address in detail the major issues raised when the Agency position is at variance with recommendations and objections (e.g., reasons specific comments and suggestions could not be accepted, and factors of overriding importance prohibiting the incorporation of suggestions). Reviewer's statements should be set forth in a "comment" and discussed in a "response." In addition, the source of all comments should be clearly identified and copies of the comments should be attached to the final statement.

Subpart D—Public Participation

§ 6.40 General.

Public participation is an integral part of the Agency planning process. It consists of continuous, two-way communication keeping the public fully informed about the status and progress of studies and findings, and actively soliciting comments from all concerned and affected groups and individuals.

§ 6.41 Public hearings.

(a) Public hearings on draft impact statements shall be held when the "responsible official" determines that a public hearing would facilitate the resolution of conflict or significant public controversy.

(b) When public hearings are to be held, the Agency must notify the public of the hearing immediately after distribution of the draft statement. This public notification must include at least fifteen (15) days prior to the date of such hearing:

(1) Notification to the public by adequate advertisement identifying the project, announcing the date, time, and place of such hearing, and announcing the availability of detailed information on the proposed project for public inspection at one or more locations in the area in which the project will be located. "Detailed information" shall include a copy of the project application and the draft environmental impact statement.

(2) Notification to the appropriate State and local agencies and to the appropriate State and metropolitan clearinghouses.

(3) Notification to interested persons.

(c) A written record of the hearing shall be made. As a minimum, the record shall contain a list of witnesses together with the text of each presentation. Generally, a stenographer should be used. A summary of the record, including the issues raised, conflicts resolved and unresolved, and any other significant portions of the record, shall be appended to the final impact statement.

(d) When a public hearing has been held by another Federal, State, or local agency on an Agency action, additional hearings need not necessarily ensue. The "responsible official" shall decide if additional hearings are required.

(e) When a program office is the originating office, the appropriate regional office will provide assistance to the originating office in holding any public hearing if assistance is requested.

§ 6.42 Comments on draft and final statements.

(a) Draft impact statements and negative declarations shall be made available to the public to assure the fullest practical provision of timely public information and understanding of Federal plans and programs. In addition, public hearings, notices of intent, and press releases will be employed by the Agency to ensure adequate public involvement.

(b) Final environmental impact statements shall be furnished to all interested persons which submitted written comments on the draft impact statement. This is to enable public organizations to comment on the final statement to the Agency or the Council on Environmental Quality, if they so desire, within the thirty (30) calendar day period prior to Agency administrative action on the proposal.

§ 6.43 Availability of documents.

(a) Draft and final environmental impact statements, negative declarations, and environmental impact appraisals shall be made available for public review at the following locations:

(1) The originating office.

(2) The Office of Public Affairs for draft and final impact statements only.

(b) The Agency will endeavor to print sufficient copies of draft and final environmental impact statements to meet anticipated demand. A nominal fee may be charged for copies requested by the public. If, however, demand is greater than anticipated and copies of statements are not available from the Agency originating office, copies can be obtained from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151.

Subpart E—Guidelines for Preparation of Environmental Impact Statements for Wastewater Treatment Works and Associated Plans

§ 6.50 Purpose.

This subpart amplifies the general EPA policies and procedures described in Subparts A through D of this part by providing detailed procedures for the preparation of impact statements on wastewater treatment works and associated plans (areawide and water quality management).

§ 6.51 Definitions.

(a) "Responsible official." The "responsible official" for impact statements prepared on wastewater treatment works and areawide and water quality management plans is the Regional Administrator.

(b) "EIS-associated documents." Notices of intent, negative declarations, environmental appraisals, and news releases.

§ 6.52 Applicability.

(a) *Actions covered.* These guidelines apply to new grants for wastewater treatment works, to grants for wastewater treatment works that were awarded prior to the promulgation of these guidelines and meet the conditions specified in paragraph (c) of this section, and areawide and water quality management plans.

(b) *Actions excluded.* These guidelines do not apply to:

(1) Program grant awards to State and interstate agencies.

(2) Training grants and contracts.

(c) *Retroactive application.* (1) This subpart shall be applied to ongoing wastewater treatment works for which grant awards were made prior to the promulgation of these guidelines when substantial funds have not been released and modifications or alternatives to the project are still available. The Regional Administrator shall ensure that an environmental impact statement shall be prepared for each such works found to have a significant impact in accordance with § 6.54 of this subpart. The grantee must be promptly notified in writing of the decision to prepare an impact statement.

(2) On such works, either all or a portion of the project work may be stopped by the Regional Administrator pending completion of the statement, if he determines that a work stoppage is warranted, to reduce the risk of incurring substantial additional costs for work which the impact statement may indicate will have to be abandoned or substantially changed. The Regional Administrator may request a written statement from the grantee to assist him in making this decision. The statement should include: A list of what work should and should not continue; a discussion of potential changes the impact statement might recommend in the work discussed in the above list; and the reasons why the work in question should or should not continue. Upon a determination of partial or complete work stoppage by the Regional Administrator, the appropriate grant action would be the issuance of a stop-work order to suspend work or a bilateral agreement to suspend project work, effected through a grant amendment, or in some cases, the issuance of a termination notice.

§ 6.53 Responsibilities.

(a) *Responsible official.* The "responsible official" for Agency actions covered by this subpart is the Regional Administrator. The responsibilities of the Regional Administrator in addition to those in § 6.14(a) of Subpart A of this part are to:

(1) Assist the Office of Federal Activities in coordinating the training of personnel involved in the review and preparation of impact statements and other EIS-associated documents.

(2) Require of grant applicants and those who have submitted plans for approval, the information the regional office requires to comply with these guidelines.

(3) Consult with the Office of Federal Activities concerning works or plans which significantly affect more than one regional office, are highly controversial, are of national significance or "pioneer" Agency policy when these works have had or should have had an environmental impact statement prepared on them.

(b) *Assistant Administrator.* The responsibilities of the Office of the Assistant Administrator, as described in § 6.14 (f) of Subpart A of this part, shall be assumed by the Assistant Administrator for Air and Water Programs for Agency actions covered by this subpart.

(c) *Water Quality and Non-Point Source Control Division, Office of Water Programs Operations.* Coordinates all activities and responsibilities of the Office of Water Programs Operations concerned with preparation and review of environmental impact statements. This includes providing technical assistance to the Regional Administrators on impact statements and assisting the Office of Federal Activities in coordinating the training of personnel involved in the review and preparation of impact statements.

(d) *Public Affairs Division, Regional Offices.* The responsibilities of the regions' Public Affairs Division in addition to those in § 6.14(d) of Subpart A of this part are to:

(1) Assist the Regional Administrator in the preparation and dissemination of negative declarations, notices of intent, press releases, and other public notices.

(2) Collaborate with the Headquarters Office of Public Affairs to analyze procedures in the regions for public participation and to develop and recommend to the Office of Federal Activities a program to improve those procedures.

§ 6.54 Criteria for preparation of environmental impact statements.

The Regional Administrator will assure that an impact statement will be prepared for treatment works and plans (See additional conditions for plans in § 6.55(d)) when:

(a) The treatment works will induce or encourage significant changes in industrial, commercial, or residential concentrations or distributions, the effects of which are not adequately reflected in an impact statement on the water quality management or areawide plans encompassing the works. Factors that must be considered in determining if induced changes are significant include but are not limited to: the land area subject to increased development as a result of the treatment works; the relative increase in population which may be induced; the potential for overloading sewage facilities; the extent to which landowners may benefit from the areas subject to increased development; and the nature of land use regulations in the affected area and their potential effects on the development.

(b) The works or plan will result in a significant displacement of population.

(c) The works or plan will have significant adverse imparts on public parks or other areas of recognized scenic or recreational value.

(d) The works or plan will have significant adverse impacts on areas of recognized archeological value or properties listed in or being considered for nomination to the National Register of Historical Places.

(e) The works or plan will significantly deface an existing residential area.

(f) The works or plan will include or induce development which will have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface or groundwater quality, fish, wildlife, their natural habitats, or other natural elements.

(g) The works or plan involves a significant diversion of effluent from one basin to another (or to the ocean) and the diversion will adversely affect the quality or quantity of the water in a basin.

(h) The treated effluent is being discharged into a body of water where the present classification is being challenged as too low to protect present uses, and the effluent will not be of sufficient quality to meet the requirements of such uses.

(i) The environmental impact of the works or plan is highly controversial based on environmental issues raised by a party or parties with recognized legal standing as defined in Sierra Club v. Morton, 92 S.Ct. 1361 (Apr. 19, 1972), which can be found in 3 Environment Reporter Cases (ERC) 2039.

§ 6.55 Procedures for preparation of impact statements for plans.

(a) *General.* (1) Areawide waste treatment management plans set forth in Section 208 of the Federal Water Pollution Control Act Amendments of 1972 will be required pursuant to 40 CFR Part 35. Areawide plans must be certified by the Governor or his designee and approved by the Administrator. Once a plan is approved, the Administrator shall not make any grant for construction of a publicly owned treatment works except for a works in conformity with this plan.

(2) Until areawide plans are developed, other plans will be required pursuant to Part 35 of this chapter.

(b) *Environmental assessment and public hearing.* (1) General. An environmental assessment must be included as an integral part of any plans submitted for approval pursuant to Part 35 of this chapter. In addition, a record of a public hearing must be submitted with such plans. The Regional Administrator may also require a grant applicant to submit an assessment and record of public hearing for any water quality management planning that he considers relevant to a proposed wastewater treatment works. Failure to satisfy any of these requirements will justify a refusal by the Regional Administrator to approve plans and specifications for treatment works.

(2) The environmental assessment must be included as an integral part of the plan whether or not Federal technical or financial assistance was utilized in the development of the plan. The assessment of alternatives must include as a minimum those items listed in paragraph (b)(4) of this section. A separate summary of the assessment incorporated in the plan may be requested by regional personnel.

(3) Responsibility for the environmental assessment. The planning agency responsible for developing the required plans shall include as part of the plan an environmental assessment of all feasible alternative water quality management strategies. Prior to acceptance of the plan, regional personnel shall review the plan and record of public hearing to assure that environmental matters have been properly considered. If any of the data or analyses in the plan are used by the regional personnel in developing an impact statement, the Regional Administrator must assume responsibility for the reliability and comprehensiveness of the data or analyses used.

(4) Content of assessment incorporated in the plan. In assessing the environmental impacts of alternative water quality management strategies, the State or local agency responsible for developing the plan shall as a minimum address in writing the questions outlined in the National Environmental Policy Act. The questions are amplified in § 6.32 of Subpart C of this part, paragraphs (a) through (g). The questions in § 6.32 (a), (b), (c), (e), and (f) must be answered for each alternative strategy and those in § 6.32 (d) and (g) must be answered considering all the alternatives.

(5) Adequacy of assessment. If the environmental assessment incorporated in the plan is judged inadequate, further consideration of the request for approval of the plan must be deferred until the deficiencies are remedied in writing.

(6) Public hearing. A record of a public hearing on the plan must be submitted with any plan required pursuant to paragraph (b)(1) of this section Hearing requirements are set forth in § 6.58 of this subpart. The hearing should be held before the plan is finalized so that the public can assist the planning agency in identifying valid environmental issues while the plan is being formulated.

(c) *Environmental review.* The Agency will review, in accordance with § 6.20 of Subpart B and § 6.54 of this subpart, all plans submitted for approval or plans on which assessments were requested, to determine if they will have any significant impacts on the environment. If the Regional Administrator determines that there may be such impacts, the applicant may be requested to submit additional environmental data or analyses. The applicant will be given written notice of what additional material he must submit under these circumstances.

(d) *Notice of intent and impact statement.* If the environmental review indicates a significant impact on the environment and if either of the following conditions is met, the Regional Administrator shall issue a notice of intent and prepare an impact statement on the plan in accordance with the procedures in Subpart B of this part:

(1) If the impacts are such that they cannot be adequately treated on a smaller scale than that of the plan, e.g., diversion of water from one river basin to another, or gradual depletion of the groundwater aquifer over a large area because of discharge of the effluent through ocean outfalls rather than using it to recharge the aquifer;

(2) If the plan is sufficiently detailed to permit at least partial environmental analysis of most of the treatment works encompassed by it, thus minimizing either the number of impact statements that may have to be written on individual works in the planning area at a later date or reducing the amount of effort that would have to be expended in preparing such statements at a later date.

Notices of intent and impact statements shall be prepared and distributed in accordance with the procedures in Subpart B of this part.

(e) *Negative declaration.* If the regional personnel, after completion of the environmental review, determine that the plan will not have a significant impact on the environment, or that neither of the conditions set forth in paragraphs (d)(1) and (2) of this section are met, a negative declaration shall be prepared in accordance with the procedures in Subpart B of this part.

§ 6.56 Procedures for preparation of impact statements for wastewater treatment works.

(a) *General.* (1) The States and their political subdivisions have primary responsibility for water pollution control. Treatment works generally are initiated and designed by a community or a regional authority and submitted to the State for approval. The construction grant program administered by the Agency provides Federal financial assistance to any State, municipality, or intermunicipal or interstate agency for the construction of treatment works. The intent of this program is to assist the State and local entities in meeting their waste treatment responsibilities.

(2) Although the Agency does not participate directly in the formulation of treatment works proposals, it does provide guidance to assure construction of well-designed treatment works which will meet water quality standards and other requirements. In addition, to satisfy the requirements of the National Environmental Policy Act of 1969, the Agency must determine if the proposed treatment works will have a significant impact upon the environment and, if so, prepare and circulate an environmental impact statement before awarding the grant. This assures that environmental considerations are properly accounted for in the final design.

(b) *Environmental assessments and public hearings.*—(1) *General.* (i) Applicants for grants for treatment works shall prepare an assessment and hold a public hearing for each treatment works. The assessment and hearing record shall be submitted prior to approval of plans, specifications, and detailed design drawings submitted for approval. The Regional Administrator may in consultation with the applicant determine that a single assessment and public hearing will suffice for a number of related treatment works. The plans, specifications, and detailed design drawings cannot be approved unless an adequate assessment has been developed by the applicant and has been commented on by the State and local clearinghouses pursuant to Office of Management and Budget Circular No. A-95.

(ii) When a number of separate grant applications are being submitted in a fiscal year for treatment works that are constituent parts of a larger system, regional personnel may delay approval of plans and specifications for the various treatment works until some or all of the works and their assessments can be reviewed together to allow the Agency to properly evaluate the cumulative impact of the individual works. The regional personnel may also request environmental information from an applicant(s) on the cumulative environmental impacts of the treatment works and alternatives to them, if this information is not available in the applications, assessments, or plan(s) encompassing the projects (see also § 6.56(c)).

(iii) As specified in § 6.52(c) of this subpart, ongoing projects must also be reviewed. If it appears that an impact statement may be required or that sufficient environmental information is not available to make a proper determination, the grant applicant may be requested to submit an environmental assessment which would provide the needed information.

(2) *Responsibility for preparation of assessments*—(i) *Applicant's responsibility.* The applicant is responsible for preparing an adequate environmental assessment for a treatment works.

(ii) *Regional offices.* The regional personnel are responsible for the approval or disapproval of plans and specifications and the acceptance of an assessment. Regional personnel shall review the applicant's assessment and determine the reliability of the applicant's data and the adequacy of the alternatives discussed. This may involve field inspection of the sites of proposed works. If the assessment is used by the regional personnel in developing an impact statement, the Regional Administrator must assume responsibility for the reliability and comprehensiveness of the data or analyses used.

(3) *Content of assessment.* An applicant's environmental assessment must contain the following:

(i) A comparative evaluation of the major alternatives including the proposed treatment works.

(ii) Answers to the six questions outlined in § 6.32 (a) through (g). The questions in § 6.32 (a), (b), (c), (e), and (f) must be answered for each alternative and those in § 6.32 (d) and (g) must be answered considering all of the alternatives.

(iii) A complete description of how the treatment works' design and construction controls will minimize the adverse impact on all aspects of the environment.

(4) *Adequacy of assessment.* If the assessment is judged inadequate, the applicant shall be notified that the evaluation will be suspended until the deficiencies are remedied in writing. The assessment will be used in the Agency's environmental review to determine if environmental factors are properly incorporated into the proposed treatment works and to determine if an environmental impact statement is required pursuant to NEPA.

(5) *Public hearing.* The applicant shall submit with the assessment a record of a public hearing held pursuant to § 6.58 of this subpart. The public hearing should be held concurrently with the development of the project design and environmental assessment. The purpose of the hearing is to allow the public (environmental/conservation groups, industries, and individuals) to assist the applicant in identifying valid environmental issues which must be considered in the treatment works development stage to avoid possible major modifications at a later date.

(c) *Environmental review.* An environmental review must be conducted for each treatment works in accordance with § 6.20 of subpart B of this part and § 6.54 of this subpart. These reviews must be conducted as early as practicable in the grant review process but no later than prior to the approval of plans, specifications, and detailed design drawings. The Regional Administrator is responsible for determining the proper scope of the NEPA review; he is not necessarily bound by the scope of the treatment works defined in the application. For example, when a grant application is for a constituent part of a larger treatment works, the regional personnel must also determine whether to conduct an environmental review on the larger works before deciding if plans and specifications should be approved or an impact statement prepared. In deciding upon the need for a broader environmental review, the regional personnel must consider if the individual grant is an irreversible element of the larger works and if the potential cumulative impacts of the elements comprising the larger works can be properly evaluated in a separate review of each treatment works. If the Regional Administrator determines that there may be significant impacts or that a broader environmental review is required, the applicant may be requested to submit additional environmental data or analyses. The applicant will be given formal written notice of what additional material he must submit.

(d) *Notice of intent and impact statement.* If the environmental review described in paragraph (c) of this section indicates a significant impact upon the environment, the Regional Administrator shall issue a notice of intent and prepare an impact statement on the appropriate scale proposed action. Notices of intent and impact statements shall be prepared and distributed in accordance with the procedures in subpart B.

(e) *Negative declaration.* If the regional personnel determine that the project will not have a significant impact on the environment, a negative declaration and environmental impact appraisal shall be prepared in accordance with the procedures in subpart B of this part.

§ 6.57 Content of environmental impact statements.

(a) Environmental impact statements for treatment works and water quality management or areawide plans will follow the format described in § 6.32 of subpart C of this part. The individual explanations in subpart C on the contents of the various sections to be included in the impact statement are also applicable. The following additional material should be included where appropriate.

(b) The impact statement section entitled "Environmental Impact on the Proposed Project or Plan" shall contain a description of the environmental impact that the proposed treatment works or plan might have on the surrounding area. Both adverse and beneficial effects need to be discussed. A brief summary of the results of pertinent studies, such as the following, should be included: Topographic analyses (USGS maps); soil surveys; maps showing aquifer-recharge areas; bedrock geology showing fault lines and any other pertinent geological material; surface water hydrologic information with special emphasis upon low-flow and flood-flow conditions and levels, assimilative capacity of the receiving stream to maintain water quality standards or goals; potential water reuse within the system and for agricultural needs outside of the system; air, noise, and odor evaluations; aquatic and terrestrial wildlife and biological studies including wetland areas; effects upon areas of natural value and park lands; and relocation of people and compensation. Other factors which should be addressed, when pertinent, include: The overall design and operational reliability of the treatment works described in the plan; proposed construction techniques; sludge processing and disposal in relation to alternatives available; anticipated and potential odors; reuse and recycling features; tree clearing controls to be used; erosion control during construction; and architectural and landscaping proposals at the project sites. (The above studies or factors are not listed in order of importance.)

(c) The impact statement section entitled, "Adverse Impacts Which Cannot be Avoided Should the Proposal be Implemented," shall consider the following additional specific factors if pertinent: Wooded or wildlife habitat which will be lost; stream or downstream impoundment; siltation resulting from construction; possible disruption of a natural, cultural, or historic setting at or near the site; effects on general development of the area; and the impact of the additional quantity of flows and associated residual pollutants upon the receiving bodies of water.

§ 6.58 Public hearing requirements.

(a) *General.* A public hearing must be held on all wastewater treatment works, except when the requirement for such a hearing is waived by the Regional Administrator. A record of a public hearing must always be included with an areawide plan submitted to the Agency for approval and, when specifically requested by a Regional Administrator in writing, one must be held on a water quality management plan. Neither plans, specifications, and detailed design drawings for the treatment works, nor the areawide plan can be approved until the record of the hearing is received. The record shall contain, as a minimum, a list of witnesses together with the text of each presentation and a statement that the participants at the hearing were informed that one of the purposes of the hearing is to discuss the environmental effects of the proposed treatment works and alternatives to it as required by the Environmental Protection Agency.

(b) *Public notice.* (1) The potential grantee must provide adequate notice to the public of the hearing. Adequate notice shall be considered to include, at least thirty (30) days prior to the date of such hearing:

(i) Notice given to the public by adequate advertisement identifying the works or plan, announcing the date, time, and place of such hearing, and announcing the availability of detailed information on the proposed works or plan for public inspection at one or more locations in the area in which the works will be located. Detailed information shall include, as a minimum, a complete description of the works or plan, cost and financing information, alternatives to the proposed works or plan, a detailed description of the effects of the works or plan on land use, and a statement that one of the purposes of the hearing is to discuss the potential environmental impacts of the works or plan and alternatives to it.

(ii) Notification to the appropriate State and local agencies and to the appropriate State and metropolitan clearinghouses.

(iii) Notification to interested environmental and conservation action groups.

(2) The potential grantee shall submit with the record of the public hearing: (i) a copy of any advertisement published, broadcast, or otherwise issued pursuant to this section; (ii) a list of those notified; and (iii) a certification that the hearing was held in accordance with the notification requirements of this section:

(c) *Waiver of hearing on grant applications.* A request to waive the hearing on a grant application for a wastewater treatment works must be submitted in writing prior to submission of the first grant application. Such requests will be acted upon promptly by the Regional Administrator. Requests must include a description of the works, the estimated cost of the works, the area that will be serviced, and the reasons the grantee feels a public hearing would not serve the public interest. Waivers will, in general, only be granted for minor works such as small additions, modifications to existing works, or cases where a hearing held on a plan encompassing the works was sufficiently comprehensive to cover the works in detail.

§ 6.59 Project commencement.

Plans, specifications, and detailed design drawings cannot be approved until a negative declaration has been prepared or the thirty (30) day waiting period after forwarding the final impact statement to CEQ has expired. In addition, before plans and specifications can be approved, the proposed treatment works must be modified to conform with any changes suggested during the impact statement process that the Agency deems necessary.

Subpart F—Guidelines for the Preparation of Environmental Impact Statements for Research and Monitoring Projects and Activities

§ 6.60 Purpose.

This subpart amplifies the general Agency policies and procedures described in Subparts A through D by providing detailed procedures for the preparation of impact statements on projects of the Office of Research and Monitoring.

§ 6.61 Definitions.

(a) "Project." This term will be used collectively for the three project types below.

(1) "Intramural (in house) project." A project undertaken with resources other than grant or contract funds.

(2) "Extramural project." A project undertaken with grant or contract funds.

(3) "Demonstration project." A project which shows the applicability of a piece of developed technology. It is a project which is carried out at or near full-scale and has a high probability of success. A demonstration project is always an extramural project.

(b) "Appropriate program official." The official within the Office of Research and Monitoring to whom the "responsible official" delegates most of the work related to compliance with NEPA.

(c) "Decision official." The individual responsible for determining if a project will be funded. The assignment of this role will vary according to task cost and delegation of authority.

(d) "EIS-associated documents." Notice of intent, negative declarations, environmental appraisals, and news releases.

§ 6.62 Applicability.

(a) This subpart applies to all projects under the direction of the Assistant Administrator for Research and Monitoring with the partial exception of projects funded under the Federal Water Pollution Control Act Amendments of 1972 (to be called the Act). The specific procedures to be followed for various project types are set forth in § 6.65 of this subpart.

(b) Except for those projects discussed in the next paragraph, projects funded under the Act are exempt from the complete procedures set forth in § 6.65. However, a brief environmental review will be conducted by the appropriate program official of all projects funded under the Act and an environmental impact statement voluntarily prepared by the Agency when a project will have any of the adverse impacts discussed in § 6.64 of this subpart. Assessments must be submitted on these projects in accordance with the requirements of § 6.65(a), but negative declarations and environmental appraisals are not required.

(c) Projects funded under the Act that will result in construction of any wastewater treatment works or will result in the introduction of pesticides, radioactive materials, or other hazardous substances into the environment, shall not be exempt from the complete procedures set forth in § 6.65 of this subpart. An EIS will be prepared if the project will have any of the significant environmental impacts discussed in § 6.64 of this subpart.

§ 6.63 Responsibilities.

(a) *Responsible official.* The "responsible official" for Agency actions covered by this subpart is the Assistant Administrator for Research and Monitoring. The Assistant Administrator will delegate most of the work to the appropriate program official. The responsibilities of the "responsible official," in addition to those in § 6.14(a) of Subpart A of this part are:

(1) Insures that environmental assessments are submitted, and the appropriate program officials conduct environmental reviews, prepare impact statements and other EIS-associated documents, and take such subsequent actions as are delegated to them by the "responsible official."

(2) When projects significantly affect more than one regional office, are highly controversial, are of national significance, or "pioneer" Agency policy, the appropriate program official shall have the project's continuation approved by the Program Management Division, Office of Program Operations, Assistant Administrator for Research and Monitoring.

(b) *Assistant Administrator*. The responsibilities of the Office of the Assistant Administrator as described in § 6.14 (f) of Subpart A of this part shall be assumed by the Assistant Administrator for Research and Monitoring for Agency actions covered by this subpart.

(c) *Program Management Division, Office of Program Operations, Assistant Administrator for Research and Monitoring*. (1) Assists the Office of Federal Activities in coordinating the training of personnel involved in the review and preparation of impact statements and other EIS-associated documents.

(2) Advises the Assistant Administrator for Research and Monitoring, through the Deputy Assistant Administrator for Program Operations, concerning projects which significantly affect more than one regional office, are highly controversial, are of national significance, or "pioneer" Agency policy, when these projects have had or should have had an environmental impact statement prepared on them.

(d) *Regional Administrators*. The responsibilities of the Regional Administrator with regard to projects of the Office of Research and Monitoring which affect his region will be to:

(1) Provide technical and administrative assistance in environmental reviews and in the preparation of impact statements.

(2) Advise the appropriate program officials and the Program Management Division, Office of Program Operations, of any projects which will significantly affect more than one regional office, are highly controversial, are of national significance, or "pioneer" Agency policy, when these projects have had or should have had an environmental impact statement prepared on them.

§ 6.64 Criteria for the preparation of environmental impact statements.

(a) An impact statement shall be prepared and processed by the Office of Research and Monitoring when:

(1) The project will induce or encourage significant changes in industrial, commercial, or residential concentrations or distributions, the effects of which are not adequately reflected in an impact statement on plans encompassing the project. Factors that must be considered in determining if induced changes are significant include but are not limited to: the land area subject to increased development as a result of the project; the relative increase in population which the project may induce; the potential for overloading sewage facilities; the extent to which landowners may benefit from the areas subject to increased development; and the nature of land use regulations in the affected area and their potential effects on the development.

(2) The project will have significant adverse impacts on public parks or other areas of recognized scenic or recreational value.

(3) The project will have significant adverse impact on areas of recognized archeological value or properties listed in or being considered for nomination to the National Register of Historical Places.

(4) The project will significantly deface an existing residential area.

(5) The project will include or induce development which will have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface or groundwater quality, fish, wildlife, their natural habitats, or other natural elements.

(6) The project involves a significant diversion of effluent from one basin to another (or to the ocean) and the diversion will adversely affect the quality or quantity of the water in a basin.

(7) When the treated effluent is being discharged into a body of water where the present classification is being challenged as too low to protect present uses, and the effluent will not be of sufficient quality to meet the requirements of such uses.

(8) The environmental impact of a project is highly controversial based on environmental issues raised by a party or parties with recognized legal standing as defined in Sierra Club v. Morton, 92 S.Ct. 1361 (Apr. 19, 1972) which can be found in 3 Environmental Reporter Cases (ERC) 2039.

(9) The project consists of field tests involving the introduction of pesticides, radioactive materials, or other hazardous substances into the environment by the Office of Research and Monitoring, its grantee, or its contractor.

(10) There is a high probability of a project ultimately being implemented on a large scale and the broad scale application may result in significant impacts, even if the proposed project will not have any significant impacts on the immediate area in which it will be located.

(b) When a project is conducted completely within a laboratory or other facility, and external environmental effects have been minimized by providing effective methods for disposal of laboratory wastes and effective safeguards to prevent accidental introductions of hazardous materials to the environment, an impact statement will normally not be necessary.

§ 6.65 Procedures for preparation, distribution, and review of EIS's and other EIS-associated documents.

(a) Environmental assessment:

(1) Environmental assessments shall be submitted to the Agency on certain extramural projects. These include all grant applications and proposals for sole-source contracts. In the case of competitive proposals, assessments need not be submitted by potential contractors because the decision on whether an impact statement is required must be made and the impact statement or negative declaration completed by the Agency before a request for proposal (RFP) is issued. If there is a question concerning the need for an assessment, the potential contractor or grantee should consult with the appropriate official responsible for the grant or contract.

(2) The assessment shall contain the same sections specified for impact statements in § 6.32 in Subpart C of this part. Copies of § 6.32 (or more detailed guidance when available) and a notice alerting potential grantees and contractors of the assessment requirements shall be included in all grant application kits, attached to letters concerning the submission of unsolicited proposals, and included with all requests for proposals (RFP's) when such proposals are sole-source.

(b) Environmental review: The appropriate program official will briefly review all projects to determine which ones will affect the environment external to the laboratory or facility in which the work will be performed. If the project will not affect the external environment, no further review is necessary and a negative declaration stating there will be no external impacts will be prepared. If a project will affect the external environment, a complete environmental review of the project will be conducted and a decision made on the need for an impact statement. This must be done before a grant or contract is made on extramural projects or before project commencement on intramural projects. Projects involving an RFP shall be reviewed before release of the RFP.

(1) Projects affecting the environment external to a laboratory or facility. On projects which will affect the environment external to a laboratory or facility in which the work will be performed, the appropriate program official shall coordinate the review with the Regional Administrator in whose region the project will be located. This coordinated review will include both an evaluation of any assessment submitted and an analysis of the need for an impact statement. If either reviewer considers the assessment inadequate, steps shall be taken to have it modified to incorporate the recommendations of that reviewer. If either reviewer determines that the project will have a significant environmental impact under the guidelines of § 6.20 of Subpart B of this part or the criteria of § 6.64 of this subpart, an impact statement shall be prepared.

(2) Projects not affecting the environment external to a laboratory or facility. If the appropriate program official de-

termines that the project will not affect the environment external to a laboratory, he will prepare a negative declaration for the record (an environmental appraisal is not required) stating that the project will not affect the external environment and an impact statement is not required. He will then forward the negative declaration and other project documents to the appropriate decision official.

(c) Notice of intent and environmental impact statement:

(1) If any of the projects discussed in paragraph (b)(1) of this section will have a significant effect on the environment, the appropriate program official will prepare a notice to the appropriate decision official for a determination on whether the project will be funded. If the project will be funded, the appropriate program official will commence preparation of the draft impact statement. The appropriate program official, through his National Environmental Research Center Director or Headquarters Division Director, shall request the Regional Administrator to assist him in the preparation and distribution of the statement as specified in Subpart B of this part.

(2) Before release to the Council on Environmental Quality, all draft and final impact statements must be forwarded through the appropriate National Environmental Research Center Director or Headquarters Division Director to the Program Management Division, Office of Program Operations, Assistant Administrator for Research and Monitoring, for approval.

(d) Negative declaration and environmental impact appraisal: If the environmental review indicates that a project discussed in paragraph (b)(1) of this section will not have any significant environmental impacts, the appropriate program official shall prepare a negative declaration and environmental impact appraisal and forward them to the appropriate decision official. If the project is to be funded, the appropriate program official will distribute the negative declaration where practical as described in § 6.25 in Subpart B of this part.

(e) Project commencement: A contract or grant will not be awarded on an extramural project, nor an intramural project begun, until a negative declaration has been issued or the thirty (30) day waiting period after forwarding the final impact statement to the CEQ has expired.

(f) The environmental impact statement process for the Office of Research and Monitoring is shown graphically in Exhibit 8.

Subpart G—Guidelines for the Preparation of Environmental Impact Statements for Air Quality Projects and Activities

§ 6.70 Purpose.

This subpart amplifies the general Agency policies and procedures described in Subparts A through D of this part by providing detailed procedures for the preparation of impact statements on air quality projects of the Office of Air and Water Programs.

§ 6.71 Definitions.

(a) "Project." This term will be used collectively for the three project types below.

(1) "Intramural (in-house) project." A project undertaken with resources other than grant or contract funds.

(2) "Extramural project." A project undertaken with grant or contract funds.

(b) "Project Officer." The individual responsible for the technical direction and evaluation of a grantee's or contractor's performance.

(c) "EIS-associated documents." Notice of intent, negative declarations, environmental appraisals, and news releases.

§ 6.72 Applicability.

This subpart applies to all air quality projects undertaken by the Office of the Assistant Administrator for Air and Water Programs. The specific procedures to be followed for various project types are set forth in § 6.75 of this subpart.

§ 6.73 Responsibilities.

(a) *Responsible official.* The "responsible official" for actions covered by this subpart is the Deputy Assistant Administrator for Air Quality Planning and Standards or the Deputy Assistant Administrator for Mobile Source Air Pollution Control depending upon the specific action. The responsibilities of this "responsible official," in addition to those in § 6.14(a) of Subpart A of this part are:

(1) Insures that environmental assessments are submitted, and that project officers conduct environmental reviews on all projects, prepare impact statements and other EIS-associated documents, and take such subsequent actions as are delegated to them by the "responsible official."

(2) When projects significantly affect more than one regional office, are highly controversial, are of national significance, or "pioneer" Agency policy, the Project Officer shall have the project's continuation approved by the appropriate Deputy Assistant Administrator.

(3) Assists the Office of Federal Activities in coordinating the training of personnel involved in the review and preparation of impact statements and other EIS-associated documents.

(4) Advises the Assistant Administrator for Air and Water Programs concerning projects which significantly affect more than one regional office, are highly controversial, are of national significance, or "pioneer" Agency policy, when the projects have had or should have had an environmental impact statement prepared on them.

(b) *Assistant Administrator.* The responsibilities of the Office of the Assistant Administrator as described in § 6.14 (f) of Subpart A of this part shall be assumed by the Assistant Administrator for Air and Water Programs for Agency actions covered by this subpart.

(c) *Regional Administrator.* The responsibilities of the Regional Administrator with regard to air quality projects which affect his region will be to:

(1) Provide technical and administrative assistance in environmental reviews and in the preparation of impact statements.

(2) Advise the Project Officer and the appropriate Deputy Assistant Administrator of any projects which will significantly affect more than one regional office, are highly controversial, are of national significance, or "pioneer" Agency policy, when these projects have had or should have an environmental impact statement prepared on them.

§ 6.74 Criteria for the preparation of environmental assessments and impact statements.

(a) *Assessment preparation criteria.* Environmental assessments need not be submitted with all grant applications and contract proposals. The following sections describe those types of projects which will or will not require the submission of assessments with a grant application or contract proposal. In the case of competitive proposals, assessments need not be submitted by potential contractors even if the proposal is for a project type listed below because an impact statement or negative declaration and environmental appraisal must be prepared by the Agency before an RFP is issued.

(1) *Project types requiring assessments.* Any project not included below that will involve effects external to the facility in which the work will be performed (e.g., construction).

(2) *Project types not requiring assessments.* (i) Training activities, including but not limited to, smoke generating equipment used for the purpose of training inspectors and other personnel in techniques for evaluating particulate emissions from plumes, and demonstration of emissions from incinerators.

(ii) Projects not involving effects on the environment outside the laboratory or facility in which the work is being conducted.

(iii) Grants for planning, developing, establishing, improving, or maintaining programs for the prevention and control of air pollution.

(iv) Grants to help defray the air quality planning program costs for any interstate air quality control region.

(v) Routine source testing (e.g., instrumentation of a smoke stack).

(b) *Impact statement preparation criteria.* An environmental review shall be performed on all air quality projects of the Office of Air and Water Programs. The guidelines set forth in § 6.20 of Subpart B of this part shall be utilized in determining whether an impact statement shall be prepared.

§ 6.75 Procedures for preparation, distribution, and review of EIS's and other EIS-associated documents.

(a) *Environmental assessments.* (1) Environmental assessments shall be submitted to the Agency as specified in § 6.74 of this subpart. If there is a question concerning the need for an assessment, the potential contractor or grantee should consult with the Project Officer for the grant or contract.

(2) The assessment shall contain the same sections specified for impact statements in § 6.32 of Subpart C of this part. Copies of § 6.32 (or more detailed guidance when available) and a notice alerting potential grantees and contractors of the assessment requirements in § 6.74 of this subpart shall be included in all grant application kits, attached to letters concerning the submission of unsolicited proposals, and included with all requests for proposals (RFP's).

(b) *Environmental review.* All projects, both those with and without assessments, shall be reviewed by the "responsible official" before a grant or contract is made on extramural projects or before commencement on intramural projects. Projects involving an RFP shall be reviewed before release of the RFP.

(1) *Projects requiring assessments or having effects external to a facility.* On projects requiring an assessment or projects not requiring assessments that will affect the environment external to the facility in which the work will be performed, the "responsible official" shall coordinate the review with the Regional Administrator in whose region the project will be located. This coordinated review will include both an evaluation of any assessment submitted and an analysis of the need for an impact statement. If either reviewer considers the assessment inadequate, steps shall be taken to have it modified to incorporate the recommendations of that reviewer. If either reviewer determines that the project will have a significant environmental impact under the guidelines of § 6.20 of Subpart B of this part, an impact statement shall be prepared.

(2) *Other projects.* On projects not requiring an assessment and not affecting the environment external to a facility, the "responsible official" will prepare a negative declaration (an environmental appraisal is not required) stating that the project will have no environmental effects external to the facility in which the work will be performed.

(c) *Notice of intent and environmental impact statement.* (1) If any of the projects reviewed in paragraph (b)(1) of this section will have a significant impact on the environment, the "responsible official" will assure that a notice of intent and a draft impact statement are prepared.

(2) The "responsible official" shall also request the appropriate Regional Administtrator to assist him in the preparation and distribution of the environmental impact statement. Distribution will be as specified in Subpart B of this part.

(d) *Negative declaration and environmental impact appraisal.* If the environmental review indicates that a project discussed in paragraph (b)(1) of this section will not have any significant environmental impacts, the "responsible official" will prepare a negative declaration and environmental impact appraisal and, where practicable, distribute them as described in § 6.25 in Subpart B of this part. See paragraph (b)(2) of this section for the procedure to follow on other projects reviewed.

(e) *Project commencement.* A contract or grant will not be awarded on an extramural project, nor an intramural project begun, until a negative declaration has been issued or the thirty (30) day waiting period after forwarding the final impact statement to the CEQ has expired.

Subpart H—Guidelines for the Preparation of Environmental Impact Statements for Solid Waste Projects and Activities

§ 6.80 Purpose.

This subpart amplifies the general Agency policies and procedures described in Subparts A through D of this part by providing detailed procedures for the preparation of impact statements on projects of the Office of Solid Waste Management Programs.

§ 6.81 Definitions.

(a) "Project." A discernible effort or activity to accomplish a specific objective or end result.

(1) "Intramural (in-house) project." A project undertaken with resources other than grant or contract funds.

(2) "Extramural project." A project undertaken with grant or contract funds.

(b) "Project officer." The individual responsible for the technical direction and evaluation of a grantee's or contractor's performance.

(c) "EIS-associated documents." Notices of intent, negative declarations, environmental appraisals, and news releases.

§ 6.82 Applicability.

This subpart applies to all projects undertaken by the Office of Solid Waste Management Programs. The specific procedures to be followed for various project types are set forth in § 6.85 of this subpart.

§ 6.83 Responsibilities.

(a) *Responsible official.* The "responsible official" for Agency actions covered by this subpart is the Deputy Assistant Administrator for Solid Waste Management Programs. The responsibilities of this "responsible official," in addition to those in § 6.14(a) of Subpart A of this part are:

(1) Insure that environmental assessments are submitted by appropriate grant and contract applicants, and that project officers conduct environmental reviews on all projects and take such subsequent actions as are delegated to them by the "responsible official."

(2) Assist the Office of Federal Activities in coordinating the training of personnel involved in the review and preparation of all EIS-associated documents.

(3) Advise the Assistant Administrator for Categorical Programs concerning projects which significantly affect more than one regional office, are highly controversial, are nationally significant, or "pioneer" Agency policy.

(b) *Assistant Administrator.* The responsibilities of the Office of the Assistant Administrator as described in § 6.14 (f) of Subpart A of this part shall be assumed by the Assistant Administrator for Categorical Programs for Agency actions covered by this subpart.

(c) *Regional Administrator.* The responsibilities of the Regional Administrator with regard to projects of the Office of Solid Waste Management Programs which affect his region will be to:

(1) Assist the "responsible official" in the project review by commenting on the project, the project application and the applicant's environmental assessment. Among other things, the comments should identify those projects which will significantly affect more than one regional office, are highly controversial, nationally significant, or "pioneer" Agency policy.

(2) Assist the "responsible official" in the preparation and distribution of EIS-associated documents.

§ 6.84 Criteria for the preparation of environmental assessments and impact statements.

(a) *Assessment preparation criteria.* Environmental assessments need not be submitted with all grant applications and contract proposals. The following sections describe when an assessment is or is not required:

(1) *Grants*—(i) *Demonstration Projects.* Environmental assessments must be submitted with all applications for demonstration grants that will involve construction, land use (temporary or permanent), transport, sea disposal, any discharges into the air or water, or any other activity having any direct or indirect effects on the environment external to the facility in which the work will be conducted. Pre-application proposals for such grants will not require environmental assessments.

(ii) *Studies and investigations.* Grant applications for studies and investigations will not require assessments.

(iii) *Training.* Grant applications for training of personnel will not require assessments.

(iv) *Plans.* Grant applications for the development of comprehensive State, interstate, or local solid waste management plans will not require environmental assessments. A detailed analysis of environmental problems and effects should be part of the planning process, however.

(2) *Contracts*—(i) *Sole-source contract proposals.* Before a sole-source contract can be awarded, an environmental assessment must be submitted with a bid proposal for a contract which will involve construction, land use (temporary or permanent), sea disposal, any discharges into the air or water, or any other activity that will directly or indirectly affect the environment external to the facility in which the work will be performed. Assessments will not generally be required for contracts for studies, investigations, or training.

(ii) *Competitive contract proposals.* Assessments will not generally be required on competitive contract proposals.

(b) *Impact statement preparation criteria.* An environmental review shall be performed on those projects of the Office of Solid Waste Management Programs on which an assessment is required or which may have effects on the environment external to the facility in which the work will be performed. The guidelines in § 6.20 of Subpart B of this part shall be utilized in determining whether an impact statement shall be prepared.

§ 6.85 Procedures for preparation, distribution, and review of EIS's and other EIS-associated documents.

(a) Environmental assessment:

(1) Environmental assessments shall be submitted to the Agency as specified in § 6.84 of this subpart. If there is a question concerning the need for an assessment, the potential contractor or grantee should consult with the appropriate project officer for the grant or contract.

(2) The assessment shall contain the same sections specified for impact statements in § 6.32 in Subpart C of this part. Copies of § 6.32 (or more detailed guidance when available) and a notice alerting potential grantees and contractors of the assessment requirements in § 6.84 of this subpart shall be included in all grant application kits, attached to letters concerning the submission of unsolicited proposals, and included with all requests for proposals (RFP's).

(b) Environmental review: An environmental review will be conducted on all projects which require assessments or which will affect the environment external to the facility in which the work will be performed. This review must be conducted before a grant or contract award is made on extramural projects or before project commencement on intramural projects. The guidelines in § 6.20 of Subpart B will be utilized in determining if the project will have a significant environmental effect. This review will include an evaluation of the assessment by both the "responsible official" and the appropriate Regional Administrator. The Regional Administrator's comments will include his recommendations on the need for an environmental impact statement. No detailed review or documentation is required on projects not requiring an assessment and not affecting the environment external to a facility, other than this determination.

(c) Notice of intent and environmental impact statement: If the project will have a significant impact on the environment, the "responsible official" will assure that a notice of intent and a draft impact statement are prepared. The "responsible official" shall request the appropriate Regional Administrator to assist him in the distribution of the environmental impact statement and other EIS-associated documents. Distribution will be as specified in Subpart B.

(d) Negative declaration and environmental impact appraisal: If the environmental review indicates that there will not be any significant environmental impacts, the "responsible official" will assure that a negative declaration and environmental impact appraisal are prepared. These documents need not be prepared for projects not requiring an environmental review.

(e) Project commencement: A project or grant will not be awarded on an extramural project, nor an intramural project begun, until a negative declaration has been issued (if one is required) or the thirty (30) day waiting period after forwarding the final impact statement to the CEQ has expired.

(f) The environmental impact statement process for the Office of Solid Waste Management Programs is shown graphically in Exhibit 9.

Subpart I—Guidelines for the Preparation of Environmental Impact Statements for Construction of Special Purpose Facilities and Facility Renovations

§ 6.90 Purpose.

This subpart amplifies the general Agency policies and procedures described in Subparts A through D by providing detailed procedures for the preparation of impact statements on construction and renovation of special purpose facilities.

§ 6.91 Definitions.

(a) "Special purpose facility." A building or space, including land incidental to the use thereof, which is wholly or predominantly utilized for the special purpose of an agency and not generally suitable for use for other purposes, as determined by the General Services Administration.

(b) "Program of requirements." A comprehensive document (booklet) describing program activities to be accomplished in the new special purpose facility or improvement. It includes architectural, mechanical, structural, and space requirements.

(c) "Scope of work." A document similar in content to the program of requirements but substantially abbreviated. It is usually prepared for small-scale projects.

§ 6.92 Applicability.

(a) *Actions covered.* These guidelines apply to all new special purpose facility construction, activities related to such construction (e.g., site acquisition and clearing), and any improvements or modifications to such facilities having potential environmental effects external to the facility. This includes new construction and improvements undertaken and funded by the Facilities Management Branch, Data and Support Systems Division, Office of Administration; by a regional office; or by a National Environmental Research Center.

(b) *Actions excluded.* This appendix does not apply to those activities of the Facilities Management Branch, Data and Support Systems Division, for which the branch does not have full fiscal responsibility for the entire project. This includes pilot plant construction, land acquisition, site clearing, and access road construction where the Facilities Management Branch's activity is only supporting a project financed by a program office. Responsibility for considering the environmental impacts of such projects rests with the office managing and funding the entire project. Other subparts of this regulation would apply depending on the nature of the project.

§ 6.93 Responsibilities.

(a) Responsible official: The "responsible official" for new construction and modification of special purpose facilities is as follows:

(1) The Chief, Facilities Management Branch, Data and Support Systems Division, shall be the responsible official on all new construction of special purpose facilities and on all improvement and modification projects for which the Facilities Management Branch has received a funding allowance.

(2) The Regional Administrator shall be the responsible official on all improvement and modification projects for which the regional office has received the funding allowance.

(3) The Center Director shall be the responsible official on all improvement and modification projects for which National Environmental Research Centers have received the funding allowance.

(b) The responsibilities of the responsible officials specified above, in addition to those in § 6.14(a) of subpart A of this part, are as follows:

(1) Ensure that environmental assessments are submitted when requested, that environmental reviews are conducted on all projects, and impact statements are prepared and circulated when there will be significant impacts.

(2) Assist the Office of Federal Activities in coordinating the training of personnel involved in the review and preparation of impact statements and other EIS-associated documents.

§ 6.94 Criteria for the preparation of environmental assessments and impact statements.

(a) *Assessment preparation criteria.* An environmental assessment may be requested of a construction contractor or consulting architect/engineer employed by the Agency if they are involved in the planning or construction of special purpose facilities or in modifications to such facilities having potential environmental effects external to the facility. Such modifications include but are not limited to: Facility additions, changes in central heating systems or wastewater treatment systems, and land clearing for access roads and parking lots.

(b) *Impact statement preparation criteria.* An environmental review shall be performed on all actions involving construction of special purpose facilities and on improvements to such facilities. The guidelines set forth in § 6.20 of subpart B of this part shall be utilized to determine whether an impact statement shall be prepared.

§ 6.95 Procedures for preparation, distribution, and review of EIS's and other EIS-associated documents.

(a) *Environmental review and assessment.* (1) An environmental review shall be conducted when the program of requirements or scope of work has been completed for the construction, improvement, or modification of special purpose facilities. For special purpose facility construction, the Chief, Facilities Management Branch, shall request the assistance of the appropriate program office and Regional Administrator in the review. For modifications and improvements, the appropriate responsible official shall request assistance in making the review from other cognizant Agency components.

(2) If construction contractors or consulting architect/engineers are involved, the responsible official may require them to submit an environmental assessment which will be used in the environmental review. The assessment shall contain the same sections specified for impact statements in § 6.32 of subpart C of this part. Contractors and consultants shall be notified in the appropriate contractual documents of this possibility.

(b) *Notice of intent, environmental impact statement, and negative declaration.* The responsible official shall decide at the completion of the environmental review whether there will be any significant environmental impacts. If there will be significant environmental impacts, a notice of intent and an environmental impact statement shall be prepared in accordance with the procedures outlined in § 6.22 of subpart B. If there will not be any significant environmental impacts, a negative declaration and environmental impact appraisal shall be prepared in accordance with the procedures outlined in § 6.25 of subpart B of this part.

(c) *Project commencement.* No construction or related activities can begin until a negative declaration has been issued and an environmental appraisal prepared or the thirty (30) day waiting period after forwarding the final impact statement to the Council on Environmental Quality has expired.

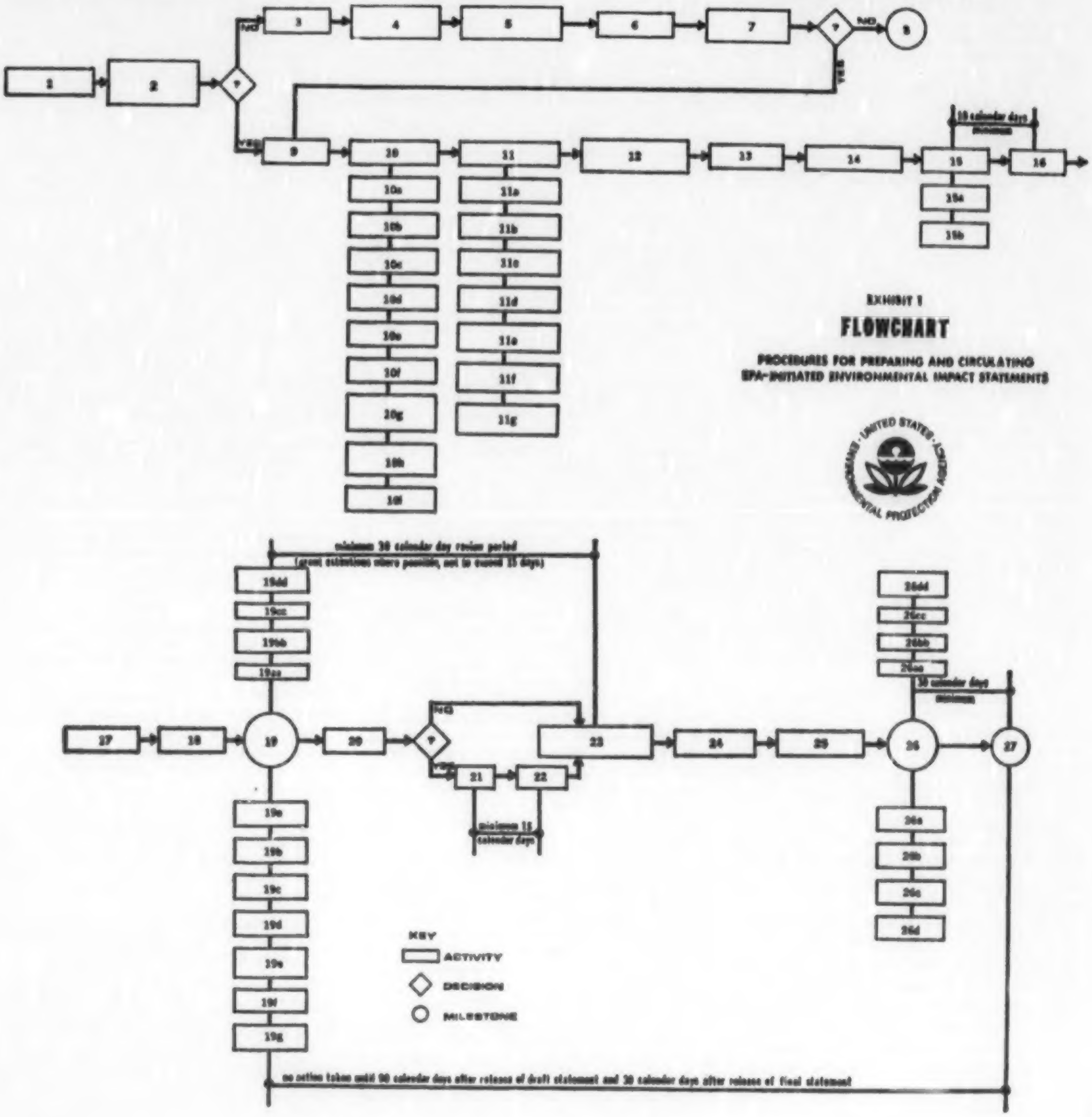

1
2
?
NO
YES
3
4
5
6
7
?
NO
YES
8
9
10
10a
10b
10c
10d
10e
10f
10g
10h
10i
11
11a
11b
11c
11d
11e
11f
11g
12
13
14
15
15a
15b
16
30 calendar days minimum
minimum 30 calendar day review period
(grant extensions where possible, not to exceed 15 days)
19dd
19cc
19bb
19aa
17
18
19
20
?
NO
YES
21
22
minimum 15 calendar days
23
24
25
26
27
30 calendar days minimum
26dd
26cc
26bb
26aa
19a
19b
19c
19d
19e
19f
19g
26a
26b
26c
26d
KEY
ACTIVITY
DECISION
MILESTONE
no action taken until 90 calendar days after release of draft statement and 30 calendar days after release of final statement

EXHIBIT 1

FLOWCHART

PROCEDURES FOR PREPARING AND CIRCULATING EPA-INITIATED ENVIRONMENTAL IMPACT STATEMENTS

1. Applicant submits environmental assessment and other available data.

2. Agency performs environmental review at the earliest possible point in the development of the proposed action, decides if an EIS is required, prepares an EIS if the project will have a significant impact or if the project's impact is likely to be highly controversial.

3. Where required prepare environmental impact appraisal.

4. Prepare and where practicable circulate negative declaration to Federal, State and local agencies, interested persons, local newspapers, and other media.

5. File impact appraisal, negative declaration, and other supportive documents in-house. (Available for public inspection)

6. Receive and evaluate comments.

7. Change decision if necessary.

8. Administrative action.

9. Prepare notice of intent.

10. Circulate notice of intent.

a. Regional interests.

b. Office of Federal Activities.

c. Appropriate headquarters program office EIS coordinator.

d. Office of Public Affairs.

e. Office of Legislation.

f. Federal agencies.

g. State and local agencies, appropriate State, regional and metropolitan clearinghouses.

h. Interested persons:

i. Newspapers and other media as appropriate.

11. Prepare preliminary draft environmental impact statement and summary sheet (optional).

a. Description of the proposed action.

b. Environmental impact of the proposed action.

c. Adverse effects which cannot be avoided should the proposal be implemented.

d. Alternatives to the proposed action.

e. Relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

f. Irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

g. A discussion of problems and objections raised by other Federal, State and local agencies, and by private organizations and individuals to date.

12. Coordinate internally for review and comment with appropriate headquarters and regional elements (optional).

13. Evaluate comments and revise draft accordingly.

14. Notify OFA and appropriate headquarters program office EIS coordinator of intent to release draft.

15. Submit draft for review.

a. OFA (2 cys.).

b. Appropriate headquarters program office EIS coordinator (2 cys.).

16. Consider comments and revise draft accordingly.

17. Prepare transmittal letter with responsible official's signature.

18. Submit news release to local newspapers and other media (1 cy.).

19. Distribute draft and transmittal letter externally for review and comments.

a. Council on environmental quality (10 cys. and 2 NTIS accession notice cards).

b. Notify Office of Legislation of release (cys. as needed).

c. Notify Office of Public Affairs of release (2 cys.).

d. Field offices of appropriate Federal agencies (2 cys.).

e. Appropriate State and local agencies; appropriate State and metropolitan clearinghouses (2 cys.).

f. Interested persons (1 cy.).

g. Forward summary sheet to OMB-OMSC (2 cys.).

aa. Regional interests.

bb. Public Affairs Division if prepared in region (copies as needed).

cc. OFA (2 cys.).

dd. Appropriate headquarters program office EIS coordinator (2 cys.).

20. Determine need for public hearing.

21. Circulate public notice.

22. Conduct public hearing.

23. Review and evaluate suggestions, criticisms and comments received and reexamine the proposed course of action and alternatives. Include evaluation of comments generated at public hearing (if held).

24. Prepare final environmental impact statement.

25. Submit news release to local newspapers and other media (1 cy.).

26. Distribute final to interests submitting comments on the draft (1 cy.).

a. Council on Environmental Quality (10 cys. and 2 NTIS accession notice cards).

b. Notify Office of Legislation of release (cys. as needed).

c. Notify Office of Public Affairs of release (2 cys.).

d. Forward summary to OMB-OMSC (2 cys.).

aa. Regional interests.

bb. Public Affairs Division if prepared in region (copies as needed).

cc. OFA (2 cys.).

dd. Appropriate headquarters program office EIS coordinator (2 cys.).

27. Administrative action.

EXHIBIT 2

NOTICE OF INTENT TRANSMITTAL MEMORANDUM SUGGESTED FORMAT

(Date)

ENVIRONMENTAL PROTECTION AGENCY,

(Appropriate office)

(Address, City, State, Zip Code)

To All Interested Government Agencies and
Public Groups.

GENTLEMEN: In accordance with the guidelines for the preparation of environmental impact statements, attached is a notice of intent to prepare such a statement for the proposed Agency action specified below:

(Official Project Name)

(City, State)

(Impact Statement No.)

If your organization needs additional information or wishes to participate in the preparation of the draft environmental impact statement, please advise the (appropriate office, city, State).

Very truly yours,

(Appropriate EPA Office)

(List Federal, State, and local agencies to be solicited for comment.)
(List public action groups to be solicited for comment.)

NOTICE OF INTENT SUGGESTED FORMAT

Notice of Intent—Environmental Protection Agency

1. Project location:

City ------------------------------------

County ----------------------------------

State -----------------------------------

2. Estimated projected costs:

Federal share (total) ------------ $------

Contract $----- Grant $----- Other $-----
Applicant share (if any)

(Name) ---------------------- $------

Other (specify) ------------------ $------

Total ------------------- $------

3. Period covered by project:

Beginning date ---------------------------
(Original date, if project
covers more than 1 year)

Dates of different project phases---------

Approximate ending date-----------------

4. Estimated application filing date---------

EXHIBIT 3

NEWS RELEASE SUGGESTED FORMAT

Notice to the Public From the Environmental Protection Agency

This announcement is to inform the public that the Environmental Protection Agency (originating office, address) (will prepare, will not prepare, has prepared) a (draft, final) environmental impact statement on the following project:

(Official Project Name)

(Purpose of Project)

(Project Location, City, County, State)

This notice is to implement the Agency's policy to inform the public to the maximum possible extent of environmental actions it is taking.

EXHIBIT 4

NEGATIVE DECLARATION SUGGESTED FORMAT

(Date)

ENVIRONMENTAL PROTECTION AGENCY,

(Appropriate office)

(Address, City, State, Zip Code)

To All Interested Government Agencies and
Public Groups.

GENTLEMEN: In accord with the procedures for the preparation of environmental impact statements, an environmental review has been performed on the proposed Agency action below:

(Official Project Name)

(Purpose of Project)

(Project Originator)

(Project Location, City, County, State)

(Potential Agency Financial Share)

(Other Funds Included)

After making an environmental review of the project, this Agency has decided not to prepare an environmental impact statement.

An environmental impact appraisal, which summarizes the review and the reasons why a statement is not required, is on file at the above office and will be available for public scrutiny upon request.

This Agency will proceed with the award of a (grant, contract) for this project.

Sincerely,

(Appropriate EPA Official)

EXHIBIT 5

ENVIRONMENTAL IMPACT APPRAISAL SUGGESTED FORMAT

A. *Identify Project.*
Name of Applicant: -------------------
Address: ---------------------------
Project Number (if assigned): ----------

B. *Summarize Assessment.*

1. Brief description of project: ---------
----

2. Probable impact of the project on the environment: ----------------------
----
----

3. Any probable adverse environmental effects which cannot be avoided: ----------
----

4. Alternatives considered with evaluation of each: ---------------------------
----

5. Relationship between local short-term uses of environment and maintenance and enhancement of long-term productivity: --
----
----

6. Any irreversible and irretrievable commitment of resources: -----------------
----

7. Public objections to project, if any, and their resolution: ----------------------
----

8. Agencies consulted about the project:

State representative's name: ----------
Local representative's name: ----------
Other: ------------------------------

C. *Reasons for concluding there will be no significant impacts.*

(Discuss topics 2, 3, 5, 6, and 7 above, and how the alternative (topic 4) selected will avoid any major public objections or significant impacts, thereby making an impact statement unnecessary.)

(Signature of appropriate official)

(Date)

EXHIBIT 6

COVER SHEET FORMAT FOR ENVIRONMENTAL IMPACT STATEMENTS

(Draft, Final)
Environmental Impact Statement

(Describe title of project or plan)

Prepared by

(Responsible Agency Office)

Approved by

(Responsible Agency Official)

(Date)

EXHIBIT 7

SUMMARY SHEET FORMAT FOR ENVIRONMENTAL IMPACT STATEMENTS

(Check one)
( ) Draft.
( ) Final Environmental Statement.

Environmental Protection Agency

(Responsible Agency Office)

1. Name of action. (Check one)
Administrative action. ( )
Legislative action. ( )

2. Brief description of action indicating what States (and counties) are particularly affected.

3. Summary of environmental impact and adverse environmental effects.

4. List alternatives considered.

5. a. (For draft statements) List all Federal, State, and local agencies from which comments have been requested.

b. (For final statements) List all Federal, State, and local agencies and other sources from which written comments have been received.

6. Dates draft statement and final statement made available to Council on Environmental Quality and public.

EXHIBIT 8

FLOWCHART FOR OR & M

PROCEDURES FOR DETERMINING IF AN EIS IS REQUIRED ON OR & M PROJECTS

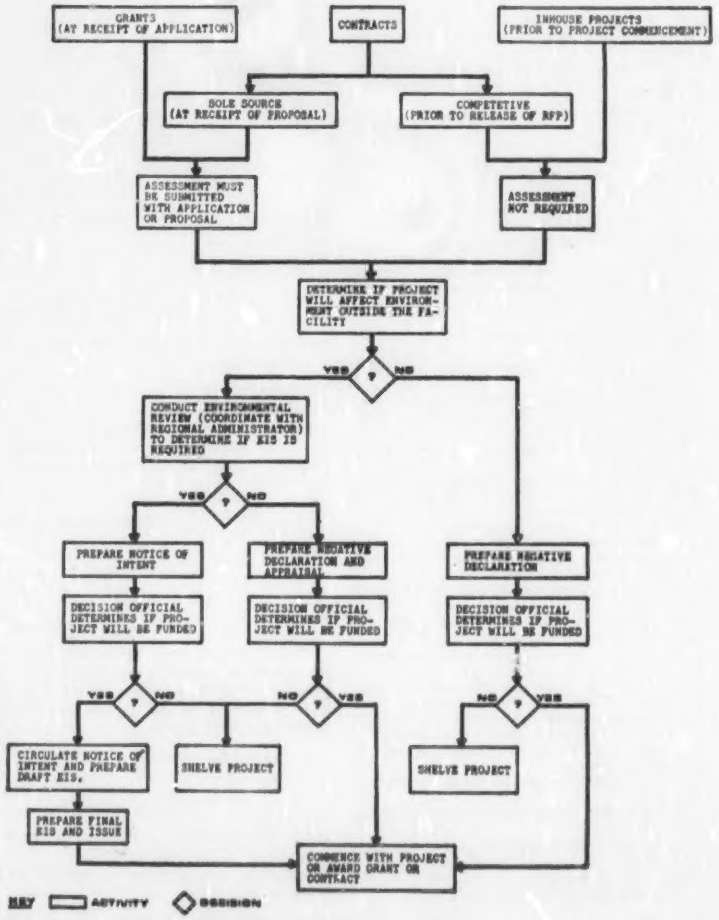
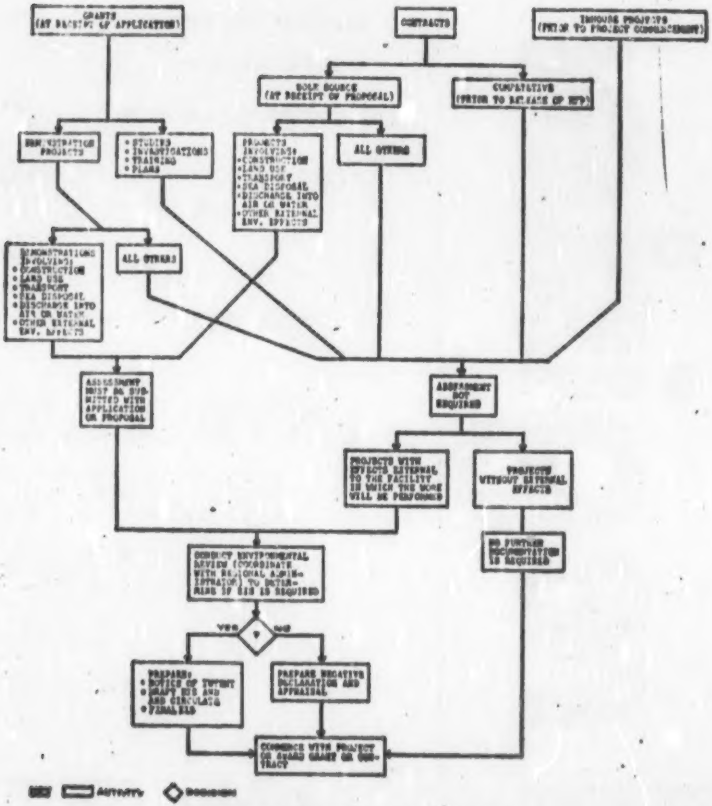

GRANTS (AT RECEIPT OF APPLICATION)
CONTRACTS
INHOUSE PROJECTS (PRIOR TO PROJECT COMMENCEMENT)
SOLE SOURCE (AT RECEIPT OF PROPOSAL)
COMPETETIVE (PRIOR TO RELEASE OF RFP)
ASSESSMENT MUST BE SUBMITTED WITH APPLICATION OR PROPOSAL
ASSESSMENT NOT REQUIRED
DETERMINE IF PROJECT WILL AFFECT ENVIRONMENT OUTSIDE THE FACILITY
YES
?
NO
CONDUCT ENVIRONMENTAL REVIEW (COORDINATE WITH REGIONAL ADMINISTRATOR) TO DETERMINE IF EIS IS REQUIRED
YES
?
NO
PREPARE NOTICE OF INTENT
PREPARE NEGATIVE DECLARATION AND APPRAISAL
PREPARE NEGATIVE DECLARATION
DECISION OFFICIAL DETERMINES IF PROJECT WILL BE FUNDED
DECISION OFFICIAL DETERMINES IF PROJECT WILL BE FUNDED
DECISION OFFICIAL DETERMINES IF PROJECT WILL BE FUNDED
YES
?
NO
NO
?
YES
NO
?
YES
CIRCULATE NOTICE OF INTENT AND PREPARE DRAFT EIS.
SHELVE PROJECT
SHELVE PROJECT
PREPARE FINAL EIS AND ISSUE
COMMENCE WITH PROJECT OR AWARD GRANT OR CONTRACT
KEY
ACTIVITY
DECISION

EXHIBIT 9

FLOWCHART FOR OSWMP

PROCEDURES FOR DETERMINING IF AN EIS IS REQUIRED ON OSWMP PROJECTS


GRANTS (AT RECEIPT OF APPLICATION)
CONTRACTS
INHOUSE PROJECTS (PRIOR TO PROJECT COMMENCEMENT)
SOLE SOURCE (AT RECEIPT OF PROPOSAL)
COMPETITIVE (PRIOR TO RELEASE OF RFP)
DEMONSTRATION PROJECTS
• STUDIES • INVESTIGATIONS • TRAINING • PLANS
PROJECTS INVOLVING: • CONSTRUCTION • LAND USE • TRANSPORT • SEA DISPOSAL • DISCHARGE INTO AIR OR WATER • OTHER EXTERNAL ENV. EFFECTS
ALL OTHERS
DEMONSTRATIONS INVOLVING: • CONSTRUCTION • LAND USE • TRANSPORT • SEA DISPOSAL • DISCHARGE INTO AIR OR WATER • OTHER EXTERNAL ENV. EFFECTS
ALL OTHERS
ASSESSMENT MUST BE SUBMITTED WITH APPLICATION OR PROPOSAL
ASSESSMENT NOT REQUIRED
PROJECTS WITH EFFECTS EXTERNAL TO THE FACILITY IN WHICH THE WORK WILL BE PERFORMED
PROJECTS WITHOUT EXTERNAL EFFECTS
NO FURTHER DOCUMENTATION IS REQUIRED
CONDUCT ENVIRONMENTAL REVIEW (COORDINATE WITH REGIONAL ADMINISTRATOR) TO DETERMINE IF EIS IS REQUIRED
YES
?
NO
PREPARE: • NOTICE OF INTENT • DRAFT EIS AND CIRCULATE • FINAL EIS
PREPARE NEGATIVE DECLARATION AND APPRAISAL
COMMENCE WITH PROJECT OR AWARD GRANT OR CONTRACT
KEY
ACTIVITY
DECISION

[FR Doc.73-820 Filed 1-16-73;8:45 am]

federal register

MONDAY, FEBRUARY 11, 1974
WASHINGTON, D.C.
Volume 39 ■ Number 29

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934 •

PART III

APPENDIX G

ENVIRONMENTAL PROTECTION AGENCY

■

WATER POLLUTION CONTROL

Construction Grants for Waste Treatment Works

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER B—GRANTS

PART 35—STATE AND LOCAL ASSISTANCE

Final Construction Grant Regulations

Title II of the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500, 33 U.S.C. 1251 et seq.) authorizes the award of construction grants for waste treatment works. The award of these grants creates a contractual obligation of the United States for payment of the Federal share of the construction costs of such projects.

Interim regulations were published in the FEDERAL REGISTER for this program on February 28, 1973 (38 FR 5329). Written comments received from interested parties are on file with the Environmental Protection Agency. The agency has carefully considered all comments submitted by the public, as well as comments made by EPA and State Agency personnel on the basis of their experience under the interim construction grant regulations. A number of these comments have been adopted or substantially satisfied by editorial changes in, deletions from, or additions to this subpart. An effort has been made to conform the procedures and requirements of the new grant system to the construction grants program established under section 8 of the prior Federal Water Pollution Control Act, as well as to ensure that new statutory requirements will be met.

Major changes in this subpart are the following:

(1) The three-step grant process has been clarified to reflect that a basic grant application is submitted for the initial award of grant assistance, and that subsequent related projects will be funded through amendment of this grant. In addition, in accordance with section 2 of Pub. L. 93–243, enacted December 28, 1973, the requirement that a Step 3 project had to result in an "operable" treatment works has been deleted. A project may be awarded for any "segment" of treatment works construction as that term is defined in new § 35.905–24, which provides that a segment may consist of any portion of the treatment works construction associated with a discrete contract or subcontract to be awarded for Step 1, 2, or 3 project work.

(2) Section 35.915 has been revised and expanded to explain more clearly EPA requirements under applicable statutory provisions for State priority systems and the interrelationship between this subpart and regulations which have been issued under section 106 and 303(e) of the Act. Each State will develop and submit a single project priority list which will remain in effect until a new list is approved as a part of the annual section 106 State program submission; once priority has been established for a project, the project will retain this priority until funded, unless the State otherwise provides through its priority system. Two new provisions have also been added. Section 35.915(g) requires that each State reserve not less than 5 percent of fiscal year 1975 and subsequent State allotments of contract authority in order to adequately provide for cost overruns which are being experienced under the construction grant program. Section 35.915(1) permits (but does not require) the State to establish a separate reserve for grant assistance for Step 1 and Step 2 projects whose selection for funding will be determined by the State agency subsequent to approval of the project list, since experience has demonstrated that States require more flexibility than is permitted by an annual priority determination.

(3) Facilities planning requirements are set forth in new §§ 35.917 through 35.917–9. In order to permit a transition into these new requirements, full compliance with substatutory requirements will not be required except with respect to Step 1 work which is initiated after April 30, 1974. After October 31, 1974, a "plan of study" must be approved prior to the initiation of Step 1 work. These new procedures are designed to assure better accomplishment of the objectives of the new Federal Water Pollution Control Act and collateral statutory requirements (such as the National Environmental Policy Act of 1969). These statutory requirements must be addressed by the applicant during the facilities planning process.

(4) New procedures have been established in revised § 35.927–5 to assure that the infiltration/inflow requirements derived from section 201(g) (3) and (4) of the 1972 FWPCA Amendments are met without unnecessary documentation and expense.

(5) New provisions in §§ 35.925–18 and 35.905–4 delineate the Agency's position with respect to the initiation of project construction prior to the award of grant assistance for Steps 1, 2, or 3. Section 206 of the FWPCA Amendments of 1972 clearly precludes the type of reimbursement previously authorized under section 8 of the former FWPCA with respect to projects (as defined under the program authorized by the prior statute) on which construction was initiated after June 30, 1972. Due to the institution of the three-step grant process under the new FWPCA, it has become necessary to address the issue of reimbursement with respect to "initiation of construction" (as defined in 35.905–4) for Steps 1 and 2. For this reason, and to permit better program management by EPA and State agencies, and to permit better accomplishment of statutory objectives, procedures are set forth in § 35.925–18 which will phase out the possibility of a reimbursement claim. Eligible Step 1 or Step 2 project work initiated prior to November 1, 1974, will be fully reimbursed in conjunction with the next award of grant assistance, if reimbursement is requested (see § 35.945(a)). Prior approval will be required with respect to Step 1 and Step 2 work which is initiated after October 31, 1974. Step 1 or Step 2 work initiated after June 30, 1975, must be preceded by award of grant assistance or, in the case of Step 1 work, prior approval of a plan of study accompanied by reservation of funds for the grant award.

State agencies are requested to furnish detailed comment through EPA Regional Administrators with respect to any difficulties which may be encountered in the application of § 35.925–18. This section will be revised, if necessary, to permit an orderly transition into a fully nonreimbursable program and at the same time to assure that the development of projects necessary to comply with applicable effluent and water quality related requirements will not be hindered.

(6) Section 35.930–6 has been added to clarify the extent of the Federal Government's obligation to pay 75 percent of approved project costs. The Section emphasizes the grantee's obligation to notify EPA and the State of unavoidable cost overruns and to avoid the incurrence of costs in excess of the approved grant amount, which operates as a ceiling upon Federal participation until and unless revised through funding of grant amendments from State allotments, for project changes for which timely notification has been received. The statutory provision for funding of this program solely through a system of State-by-State allotments operates to limit the possibility of funding for cost overruns incurred under these grants in a more rigid manner than cost overrun funding under Federal contracts; cost overruns under these grants must be funded from State allotments, in addition to the funding of new projects.

(7) Section 35.908 has been restated to encourage more explicitly the use of advanced technology and accelerated construction techniques. The section now provides that "* * * processes or methods which have been successfully demonstrated under less than full scale conditions may be utilized in the construction of treatment works * * *." Under the interim regulations, only processes which had been demonstrated under "comparable" conditions could be used.

(8) New § 35.938 codifies EPA procedures pertaining to the award of construction contracts by grantees during Step 3. The basic intent of these procedures is to assure free and open competition among bidders and to assure compliance with the nonrestrictive specification requirement of section 204(a)(6) of the Act. Section 35.937 which would address procurement by grantees of professional and personal services, is being separately issued as a proposed regulation, which will not be effective until an interim or final regulation is adopted.

In addition, a considerable number of technical revisions have been made throughout the subpart. Accordingly, for the convenience of users, the entire subpart is being republished.

Construction grant regulations adopted under Section 8 of the former FWPCA

(§ 35.800 et seq. of this part) remain in effect and are applicable to construction grants awarded prior to January 1, 1973, under the authority of section 8. This Subpart E establishes policies and procedures applicable only to construction grant awards from fiscal year 1973 and later contractual obligation authority allotments under Title II of the FWPCA Amendments of 1972.

Regulations have been promulgated separately as Subpart D of this part to implement the reimbursement provisions of section 206 of the 1972 FWPCA Amendments.

This subpart is promulgated as a final regulation and will replace the interim regulations previously promulgated. However, because of the numerous changes and additions which have been made throughout this subpart, public comment is again invited. In particular, comment is invited upon the new provisions of the following sections: 35.903, 35.908, 35.915, 35.917 to 35.917-9, 35.930-6, 35.938, 35.939, and 35.960. Interested parties are encouraged to submit written comments, views, or data concerning this subpart to the Director, Grants Administration Division, Environmental Protection Agency, Washington, D.C. 20460. All such submissions received on or before April 15, 1974, will be considered with respect to the need for amendment of this subpart.

Effective date. This subpart shall become effective February 11, 1974. All EPA construction grants awarded pursuant to sections 109(b) and 201(g)(1) shall be subject to this subpart. It is necessary that this subpart take effect immediately in order to accomplish the objectives of the Act and to assure optimum achievement of the effluent and water quality objectives established pursuant to the Act.

Dated: February 4, 1974.

RUSSELL E. TRAIN,
Administrator.

Subpart E—Grants for Construction of Treatment Works—Federal Water Pollution Control Act Amendments of 1972

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AUTHORITY: Secs. 109(b), 201 through 205, 207, 210 through 212, and 501(a), 502, and 511 of Pub. L. 92-500 (86 Stat. 816; 33 U.S.C. 1251) as amended by Pub. L. 93-243.

§ 35.900 Purpose.

This subpart supplements the EPA general grant regulations and procedures (Part 30 of this chapter) and establishes policies and procedures for grants to assist the construction of publicly owned waste treatment works in compliance with the Federal Water Pollution Control Act.

§ 35.903 Summary of construction grant program.

(a) The construction of Federally financed waste treatment works is generally accomplished in three steps: Step 1 facilities plans and related elements; Step 2 preparation of construction drawings and specifications; and Step 3 fabrication and building of a treatment works.

(b) The Regional Administrator may award grant assistance for a Step 1, Step 2, or Step 3 project, or, under special conditions, for a project involving a combination of Steps 2 and 3. A "project" (see § 35.905-16) may consist of an entire step or any "segment" (see § 35.905-24) of construction within a step.

(c) Grants are awarded from State allocations (see § 35.910) pursuant to statute. No grant assistance may be awarded unless priority for a project has been determined in accordance with an approved State priority system pursuant to § 35.915. The State is responsible for determining the amount and timing of Federal assistance to each municipality for which treatment works funding is needed.

(d) The scope of a project will be initially defined by a prospective applicant. This initial project scope may be revised by the State when priority for the project is established. The final determination of project scope will be made by the Regional Administrator when grant assistance is awarded (see § 35.930–4).

(e) An application must first be submitted to the State agency for each proposed grant. The basic grant application must meet the requirements for the project set forth in § 35.920–3. Submissions required for grant assistance for subsequent related projects shall be provided in the form of amendments to the basic application. The State agency will forward to the appropriate EPA Regional Administrator complete project applications or amendments thereto for which priority has been determined by the State agency. The grant will consist of the grant agreement resulting from the basic application and grant amendments awarded for subsequent related projects.

(f) Generally, grant assistance for projects involving Steps 2 or 3 will not be awarded unless the Regional Administrator first determines that the facilities planning requirements of §§ 35.917 to 35.917–9 of this subpart have been met. After October 31, 1974, written approval of a "plan of study" (see § 35.920–3(a)(1)) must be obtained prior to initiation of facilities planning. After June 30, 1975, facilities planning may not be initiated prior to approval of a Step 1 grant (see §§ 35.925–18 and 35.905–4).

(g) If initiation of Step 1, 2, or 3 construction (see § 35.905–4) has occurred prior to award of grant assistance, costs incurred prior to the approved date of initiation of construction will not be paid and award will not be made except under the circumstances set forth in § 35.925–18.

(h) The Regional Administrator may not award grant assistance unless the project application requirements of § 35.920–3 have been met and he has made the determinations required by § 35.925 et seq.

(i) A grant or grant amendment awarded for a project under this subpart shall constitute a contractual obligation of the United States to pay the Federal share of allowable project costs up to the amount approved in the grant agreement (including amendments) in accordance with § 35.930–6 of this subpart, subject to the grantee's compliance with the conditions of the grant (see § 35.935 et seq.) and other applicable requirements of this subpart.

(j) Section 35.945 authorizes prompt payment for incurred project costs in accordance with a negotiated payment schedule. The initial request for payment may cover unpaid allowable costs of work completed prior to award except as otherwise provided in § 35.925–18. All allowable costs incurred prior to initiation of project construction must be claimed in the application for grant assistance for that project prior to the award of such assistance or no subsequent claim for payment may be made for such costs. The estimated amount of any grant or grant amendment, including any prior costs, must be established in conjunction with determination of priority for the project. The Regional Administrator must determine that the project costs are reasonable and allowable, in accordance with § 35.940.

(k) Pursuant to section 204(b) of the Act, the grantee must comply with applicable user charge and industrial cost recovery requirements; see §§ 35.925–11, 35.925–12, 35.928, 35.935–13, and Appendix B of this subpart.

(l) Sewage collection systems for new communities, new subdivisions, or newly developed urban areas must be addressed in the planning of such areas and should be included as part of the development costs of the new construction in these areas. Such costs will not be allowed under the construction grant program, pursuant to section 211 of the Act; see § 35.925–13.

(m) The approval of a plan of study for Step 1, a facilities plan, or award of grant assistance for Step 1, Step 2, or Step 3, or any segment thereof, will not constitute a Federal commitment for approval of grant assistance for any subsequent project.

(n) Where justified, a deviation from any substatutory requirements of this subpart may be granted pursuant to § 30.1001 of this chapter.

(o) It is the policy of the Environmental Protection Agency to promote adequate public participation in the construction grant process. Opportunity for public participation is required: (1) In the development of the State water pollution control strategy and State project priority list, pursuant to §§ 35.556 and 35.915; and (2) in the development of facilities plans, pursuant to § 35.917–5.

§ 35.905 Definitions.

As used in this subpart, the following words and terms shall have the meaning set forth below:

§ 35.905–1 The Act.

The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended by the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500) and Pub. L. 93–243.

§ 35.905–2 Combined sewer.

A sewer intended to serve as a sanitary sewer and a storm sewer, or as an industrial sewer and a storm sewer.

§ 35.905–3 Complete waste treatment system.

A complete waste treatment system consists of all the connected treatment works necessary to meet the requirements of Title III of the Act and involved in: (a) The transport of wastewaters from individual homes or buildings to a plant or facility wherein treatment of the wastewater is accomplished; (b) the treatment of the wastewaters to remove pollutants, and (c) the ultimate disposal, including recycling or reuse, of the treated wastewaters and residues resulting from the treatment process. One complete waste treatment system would, normally, include one treatment plant or facility, but in instances where two or more treatment plants are interconnected, all of the interconnected treatment works will be considered as one waste treatment system.

§ 35.905–4 Construction.

Any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items. The phrase "initiation of construction," as used in this subpart means with reference to a project for:

(a) The preparation of a facilities plan or completion of other Step 1 elements:

(1) Prior to November 1, 1974, the execution of an agreement for any element of Step 1 project work (including facilities planning); or, if an agreement covering Step 1 work has previously been entered into, the issuance of a notice to proceed with the Step 1 work; or a work order for the execution of any element of Step 1 work;

(2) After October 31, 1974, the date of approval of a plan of study (see § 35.925–18(a)(1));

(b) the preparation of construction drawings and specifications (Step 2):

(1) Prior to November 1, 1974, the execution of an agreement for the preparation of construction drawings and specifications; or, if an agreement covering both Step 1 and Step 2 elements has been previously entered into, the issuance of a notice to proceed; or a work order for the preparation of construction drawings and specifications;

(2) After October 31, 1974, the date of approval of a facilities plan (see § 35.925–18(a)(2));

(c) the building and erection of a treatment works segment (Step 3): the issuance of a notice to proceed under a construction contract for any segment of Step 3 project work, or, if notice to proceed is not required, execution of the construction contract.

§ 35.905–5 Excessive infiltration/inflow.

The quantities of infiltration/inflow which can be economically eliminated from a sewer system by rehabilitation, as determined by a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions with the total costs for transportation and treatment of the infiltration/inflow, subject to the provisions in § 35.927.

§ 35.905–6 Industrial cost recovery.

Recovery by the grantee from the industrial users of a treatment works of the grant amount allocable to the treatment of wastes from such users pursuant to section 204(b) of the Act and this subpart.

§ 35.905-7 Industrial Cost Recovery Period.

That period during which the grant amount allocable to the treatment of wastes from industrial users is recovered from the industrial users of such works.

§ 35.905-8 Industrial user.

Any nongovernmental user of publicly owned treatment works identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under the following divisions:

(a) *Division A.* Agriculture, Forestry, and Fishing.

(b) *Division B.* Mining.

(c) *Division D.* Manufacturing.

(d) *Division E.* Transportation, Communications, Electric, Gas, and Sanitary Services.

(e) *Division I. Services.* A user in the Divisions listed may be excluded if it is determined that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences.

§ 35.905-9 Infiltration.

The water entering a sewer system, including sewer service connections, from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguished from, inflow.

§ 35.905-10 Infiltration/inflow.

The total quantity of water from both infiltration and inflow without distinguishing the source.

§ 35.905-11 Inflow.

The water discharged into a sewer system, including service connections from such sources as, but not limited to, roof leaders, cellar, yard, and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm waters, surface run-off, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

§ 35.905-12 Interceptor sewer.

A sewer whose primary purpose is to transport wastewaters from collector sewers to a treatment facility.

§ 35.905-13 Interstate agency.

An agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of water pollution.

§ 35.905-14 Municipality.

A city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or pursuant to State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under section 208 of the Act. This definition excludes a special district, such as a school district, which does not have as one of its principal responsibilities the treatment, transport, or disposal of liquid wastes.

§ 35.905-15 Operable treatment works.

An operable treatment works is a treatment works that:

(a) Upon completion of construction will treat wastewater, transport wastewater to or from treatment, or transport and dispose of wastewater in a manner which will significantly improve an objectionable water quality related situation or health hazard in existence prior to construction of the treatment works, and

(b) Is a component part of a complete waste treatment system which, upon completion of construction for the complete waste treatment system (or completion of construction of other treatment works in the system in accordance with a schedule approved by the Regional Administrator) will comply with all applicable statutory and regulatory requirements.

§ 35.905-16 Project.

The scope of work for which Federal assistance is awarded by a grant or grant amendment pursuant to this subpart. For the purposes of this subpart, the scope of work is defined as Step 1, Step 2, or Step 3 of treatment works construction or segments thereof (see § 35.905-24 and § 35.930-4).

§ 35.905-17 Replacement.

Expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the service life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

§ 35.905-18 Sanitary sewer.

A sewer intended to carry only sanitary or sanitary and industrial waste waters from residences, commercial buildings, industrial plants, and institutions.

§ 35.905-19 Sewage collection system.

For the purpose of § 35.925-13 of this subpart, each, and all, of the common lateral sewers, within a publicly-owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual structures or from private property, and which include service connection "Y" fittings designed for connection with those facilities. The facilities which convey wastewater from individual structures or from private property to the public lateral sewer, or its equivalent, are specifically excluded from the definition, with the exception of pumping units, and pressurized lines, for individual structures or groups of structures when such units are cost effective and are owned and maintained by the grantee.

§ 35.905-20 State.

A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

§ 35.905-21 State agency.

The State water pollution control agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.

§ 35.905-22 Storm sewer.

A sewer intended to carry only storm waters, surface run-off, street wash waters, and drainage.

§ 35.905-23 Treatment works.

Any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of the act, or necessary to recycle or reuse water at the most economical cost over the useful life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances; extensions, improvement, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal or residues resulting from such treatment; or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water run-off, or industrial waste, including waste in combined storm water and sanitary sewer systems.

§ 35.905-24 Treatment Works Segment.

A treatment works segment may be any portion of an operable treatment works described in an approved facilities plan, pursuant to § 35.917, and which can be identified as a discrete contract or subcontract for Step 1, 2, or 3 work. Completion of construction of a treatment works segment may, but need not, result in an operable treatment works.

§ 35.905-25 Useful life.

Estimated period during which a treatment works will be operated.

§ 35.905–26 User charge.

A charge levied on users of a treatment works for the cost of operation and maintenance of such works, pursuant to Section 204(b) of the Act and this subpart.

§ 35.908 Advanced technology and accelerated construction techniques.

It is the policy of the Environmental Protection Agency to encourage and, where possible, to assist in the development of accelerated construction techniques and new or advanced processes, methods, and technology for the construction of waste treatment works. New or advanced processes or methods may be utilized in the construction of treatment works under this subpart. New technology or processes may be developed or demonstrated with the assistance of EPA research or demonstration grants awarded under Title I of the Act. New processes or methods which have been successfully demonstrated under less than full scale conditions may be utilized in the construction of treatment works under this subpart.

§ 35.910 Allocation of funds.

§ 35.910–1 Allotment.

Allotments shall be made among the States from funds authorized to be appropriated pursuant to section 207 in the ratio that the most recent congressionally approved estimate of the cost of constructing all needed publicly owned treatment works in each State bears to the most recent congressionally approved estimate of the cost of construction of all needed publicly owned treatment works in all of the States. Computation of a State's ratio shall be carried out to the nearest ten thousandth percent (0.0001 percent) and allotted amounts will be rounded to the nearest thousand dollars except for Fiscal Year 1975 which will be rounded to the nearest fifty dollars.

§ 35.910–2 Reallotment.

(a) Sums allotted to a State under § 35.910–1 shall be available for obligation on and after the date of such allotment and shall continue to be available to such State for a period of one year after the close of the fiscal year for which such sums are authorized. Funds remaining unobligated at the end of the allotment period will be immediately reallotted by the Administrator, on the basis of the most recent allotment ratio to those States which have used their full allotment.

(b) Reallotted sums shall be added to the last allotments made to the States and shall be in addition to any other funds otherwise allotted, and be available for obligation in the same manner and to the same extent as such last allotment.

(c) Any sums which have been obligated under this subpart which remain after final payment, or after termination of a project, shall be credited to the State to which such sums were last allotted. Such released sums shall be added to the amounts last allotted to such State and shall be available for obligation in the same manner and to the same extent as such last allotment.

§ 35.910–3 Fiscal Years 1973 and 1974 Allotments.

(a) For Fiscal Years ending June 30, 1973 and June 30, 1974, sums of $2 billion and $3 billion, respectively, have been allotted on the basis of Table III of House Public Works Committee Print No. 92–50.

(b) The percentages used in computing the State allotments set forth in paragraph (c) of this section for Fiscal Years 1973 and 1974 are as follows:

State	*Percentage*	*State*	*Percentage*
Alabama	0.3612	North Carolina	.9229
Alaska	.2252	North Dakota	.0467
Arizona	.1346	Ohio	5.7737
Arkansas	.3536	Oklahoma	.4608
California	9.8176	Oregon	.8494
Colorado	.3166	Pennsylvania	5.4214
Connecticut	1.6810	Rhode Island	.4889
District of Columbia	.7114	South Carolina	.6455
Delaware	.6565	South Dakota	.0048
Florida	3.6264	Tennessee	1.1605
Georgia	.9730	Texas	2.7694
Hawaii	.3303	Utah	.1408
Idaho	.2177	Vermont	.2218
Illinois	6.2489	Virginia	2.9143
Indiana	3.3662	Washington	.8906
Iowa	1.1557	West Virginia	.4909
Kansas	.3742	Wisconsin	1.7415
Kentucky	.6599	Wyoming	.0268
Louisiana	.9428	Guam	.0872
Maine	0.9675	Puerto Rico	.8845
Maryland	4.2582	Virgin Islands	.0893
Massachusetts	3.7576	American Samoa	.0048
Michigan	7.9814	Trust Territory of Pacific Islands	.0378
Minnesota	2.0319		100.0000
Mississippi	.3935		
Missouri	1.6556		
Montana	.1662		
Nebraska	.3708		
Nevada	.2877		
New Hampshire	.8309		
New Jersey	7.7040		
New Mexico	.2108		
New York	11.0578		

(c) Based upon the percentages, the sums allotted to the States as of July 1, 1973, for Fiscal Years 1973 and 1974 are as follows:

State	Fiscal year 1973	Fiscal year 1974
Alabama	$7,224,000	$10,836,000
Alaska	4,504,000	6,756,000
Arizona	2,692,000	4,038,000
Arkansas	7,072,000	10,608,000
California	196,352,000	294,528,000
Colorado	6,332,000	9,498,000
Connecticut	33,620,000	50,430,000
Delaware	13,130,000	19,695,000
District of Columbia	14,228,000	21,342,000
Florida	72,528,000	108,792,000
Georgia	19,460,000	29,190,000
Hawaii	6,606,000	9,909,000
Idaho	4,354,000	6,531,000
Illinois	124,978,000	187,467,000
Indiana	67,324,000	100,986,000
Iowa	23,114,000	34,671,000
Kansas	7,484,000	11,226,000
Kentucky	13,198,000	19,797,000
Louisiana	18,856,000	28,284,000
Maine	19,350,000	29,025,000
Maryland	85,164,000	127,746,000
Massachusetts	75,152,000	112,728,000
Michigan	159,628,000	239,442,000
Minnesota	40,638,000	60,957,000
Mississippi	7,870,000	11,805,000
Missouri	33,112,000	49,668,000
Montana	3,324,000	4,986,000
Nebraska	7,416,000	11,124,000
Nevada	5,754,000	8,631,000
New Hampshire	16,618,000	24,927,000
New Jersey	154,080,000	231,120,000
New Mexico	4,216,000	6,324,000
New York	221,156,000	331,734,000
North Carolina	18,458,000	27,687,000
North Dakota	934,000	1,401,000
Ohio	115,474,000	173,211,000
Oklahoma	9,216,000	13,824,000
Oregon	16,988,000	25,482,000
Pennsylvania	108,428,000	162,642,000
Rhode Island	9,778,000	14,667,000
South Carolina	12,910,000	19,365,000
South Dakota	1,828,000	2,742,000
Tennessee	23,210,000	34,815,000
Texas	55,388,000	83,082,000
Utah	2,816,000	4,224,000
Vermont	4,436,000	6,654,000
Virginia	58,286,000	87,429,000
Washington	17,812,000	26,718,000
West Virginia	9,818,000	14,727,000
Wisconsin	34,830,000	52,245,000
Wyoming	536,000	804,000
Guam	1,744,000	2,616,000
Puerto Rico	17,690,000	26,535,000
Virgin Islands	1,786,000	2,679,000
American Samoa	96,000	144,000
Trust Territory of Pacific Islands	756,000	1,134,000
Total	2,000,000,000	3,000,000,000

§ 35.910–4 Fiscal Year 1975 Allotments.

(a) For the Fiscal Year ending June 30, 1975, a sum of $4 billion has been allotted based 50 percent on the ratios of Table I and 50 percent of Table II of House Public Works Committee Print No. 93–28, pursuant to Pub. L. 93–243.

(b) The percentages used in computing the State allotments set forth in paragraph (c) of this section, for Fiscal Year 1975 are as follows:

State	*Percentage*	*State*	*Percentage*
Alabama	0.8016	Delaware	0.5518
Alaska	0.3830	District of Columbia	0.9724
Arizona	0.4066	Florida	4.1838
Arkansas	0.6069	Georgia	1.0360
California	11.6340	Hawaii	1.0463
Colorado	0.7867	Idaho	0.2009
Connecticut	1.7687		

State	*Percentage*	*State*	*Percentage*
Illinois	6.4173	Pennsylvania	5.6652
Indiana	1.6196	Rhode Island	0.5306
Iowa	1.0012	South Carolina	1.4223
Kansas	1.0322	South Dakota	0.0907
Kentucky	1.6579	Tennessee	1.2303
Louisiana	0.7245	Texas	1.6534
Maine	0.6870	Utah	0.4217
Maryland	1.3767	Vermont	0.3001
Massachusetts	2.2945	Virginia	2.5096
Michigan	4.7078	Washington	1.6463
Minnesota	1.6341	West Virginia	0.9598
Mississippi	0.5355	Wisconsin	1.3817
Missouri	1.8960	Wyoming	0.0768
Montana	0.1421	Guam	0.0478
Nebraska	0.5314	Puerto Rico	1.0385
Nevada	0.4755	Virgin Islands	0.0796
New Hampshire	0.8920	American Samoa	0.0147
New Jersey	5.4789	Trust Territory of the Pacific Islands	0.0133
New Mexico	0.1869		
New York	12.4793		
North Carolina	1.7029		
North Dakota	0.0618		
Ohio	4.9184		
Oklahoma	1.1958		
Oregon	0.8682		

(c) Based upon the percentages set forth in paragraph (b) of this section and allotment adjustments the sums allotted to the States as of January 1, 1974, are as follows:

Alabama	$33,785,150
Alaska	15,059,100
Arizona	17,695,750
Arkansas	23,860,100
California	457,420,100
Colorado	30,930,900
Connecticut	69,542,900
Delaware	21,615,300
District of Columbia	38,228,800
Florida	164,495,400
Georgia	76,153,000
Hawaii	41,140,000
Idaho	7,898,400
Illinois	252,311,700
Indiana	63,678,100
Iowa	39,364,800
Kansas	40,192,500
Kentucky	65,183,600
Louisiana	35,551,850
Maine	26,227,000
Maryland	54,128,100
Massachusetts	90,215,900
Michigan	188,637,400
Minnesota	64,247,300
Mississippi	22,346,700
Missouri	74,546,400
Montana	7,534,600
Nebraska	20,894,000
Nevada	18,693,600
New Hampshire	35,072,950
New Jersey	234,656,200
New Mexico	10,670,500
New York	490,654,200
North Carolina	70,494,200
North Dakota	6,876,100
Ohio	193,878,700
Oklahoma	46,997,400
Oregon	34,136,700
Pennsylvania	222,744,100
Rhode Island	20,864,000
South Carolina	55,932,000
South Dakota	7,308,800
Tennessee	48,371,800
Texas	106,900,250
Utah	16,579,600
Vermont	11,800,800
Virginia	96,673,400
Washington	64,730,500
West Virginia	$37,735,700
Wisconsin	52,360,400
Wyoming	4,049,450
Guam	2,172,000
Puerto Rico	40,892,900
Virgin Islands	3,130,900
American Samoa	876,700
Trust Territory of Pacific Islands	524,300

Allotment adjustment has been made for those States that would receive an allotment that would be less than their Fiscal Year 1972 allotment. The allotment of those States which fall below their Fiscal Year 1972 allotment will be restored to their Fiscal Year 1972 allotment using funds from the total allotment. Remaining funds will be allocated to States (excluding the States with allotment adjustment) based on adjusted percentages. Minimum allotment amounts are determined on the basis of Table III of House Public Works Committee Print 93–28.

§ 35.912 Delegation to State agencies.

It is the policy of the Environmental Protection Agency to utilize staff capabilities of State agencies to the maximum extent practicable through optimum utilization of available State and Federal resources and to eliminate unnecessary duplicative reviews of documents that are required as a part of the construction grant process. Accordingly, the Regional Administrator may enter into a written agreement, where appropriate, with a State agency within his Region for certification by the State agency of the technical and/or administrative adequacy of specified documents: *Provided*, That an applicant or grantee may request review by the Regional Administrator of an adverse recommendation by a State agency.

§ 35.915 State determination of project priority list.

Construction grants will be awarded from allotments available pursuant to § 35.910 in accordance with the approved State project priority list which is derived from the approved State priority system.

(a) *State priority system.* The State priority system must be designed to achieve optimum water quality improvement consistent with the goals and requirements of the Act. It shall be submitted and revised in accordance with Subpart B of this part.

(b) *State municipal discharge inventory.* Pursuant to § 130.43 of this Chapter, the State agency shall prepare a municipal discharge inventory which sets forth for the entire State a ranking of all significant municipal discharges (including, for example, eligible municipal septic systems). Such list must be submitted as part of the annual State program for the approval of the Regional Administrator under § 35.557. This State municipal discharge inventory shall be updated annually and submitted with the State program pursuant to § 35.555 of this part.

(c) *Project priority list.* The State agency shall prepare a listing of the projects for which Federal assistance may be requested. This listing should include a sufficient number of projects to permit funding to proceed in an orderly fashion through the period between the next allotment of construction grant funds to the next approval of a revised project priority list. The Regional Administrator shall consider for approval that portion of the project priority list from which grant awards may be made from currently available allotments, pursuant to the approval procedures of § 35.555.

(1) In determining which projects to fund the State shall consider the severity of pollution problems, the population affected, the need for preservation of high quality waters, and national priorities as well as total funds available, project and treatment works sequence and additional factors identified by the State in its priority system. The list of projects to be funded should be developed in conjunction with the municipal discharge inventory. It should be consistent with the municipal discharge inventory but need not rigidly follow the ranking of discharges in the inventory. The net result should be a concentration of projects to be funded in high priority areas. The Regional Administrator may require the State agency to explain the basis for priority determination for specific projects located in low priority areas (e.g., court orders, critical dischargers on lower priority segments, etc.).

(2) The project priority list shall set forth, as a minimum, the following information for each project:

(i) Name of municipality;

(ii) State assigned EPA project number;

(iii) Brief description of type of project and anticipated scope of project (Step 1, 2, or 3 or combination thereof);

(iv) Estimated total project cost; and

(v) Estimated Federal assistance.

(3) A project which is included within the approved portion of the list shall retain its priority until a grant is awarded, unless the State otherwise provides through its priority system. Accordingly, in developing a revised list, the State must generally include thereon all projects from the approved portion of the prior list or amendments thereto for which grant assistance has not been awarded at the time the revision is prepared. The priority for all other projects will be determined in accordance with the approved State priority system.

(4) A project will be removed from the project priority list if (i) the project has been fully funded, (ii) a final and conclusive determination of project ineligibility has been made by the Regional Administrator, or (iii) the project has been removed by the State through amendment or revision of the list.

(5) In order to provide a list of projects which can be funded from available allotments in the period after January 1, 1974, until the approval of the next list, a State may add projects to the approved fiscal year 1974 list. Projects for which fiscal year 1975 contract authority will

be utilized must be identified since projects initially funded with fiscal year 1975 funds will be subject to best practicable waste treatment technology requirements (see § 35.930–4).

(d) *Submission, amendment and approval of project priority list.* The project list shall be submitted and approved annually as part of the State Program and may be amended pursuant to § 35.555 and § 35.557.

(e) *Application of additional funds.* If the State has submitted a project priority list containing more projects than could be funded under the original allotment, upon allocation of additional funds, the Regional Administrator's approval of the project priority list will be extended to the required number of projects. If there is an insufficient number of projects on the list, projects may be added to the list, pursuant to §§ 35.555 and 35.557 to account for additional funds which are available.

(f) *Public participation.* The Regional Administrator may not approve a project priority list or any significant amendment thereto unless he determines that a public hearing pursuant to § 35.556 of this Part has been held on such list prior to approval. This public hearing may be conducted in conjunction with a regular public meeting of the State agency, provided that adequate and timely Statewide notice of the meeting, including publication of the proposed project priority list is given, and attendees at the meeting are afforded adequate opportunity to express their views concerning the list. A public hearing is not required with respect to any amendment of the list (including deletion of a project) which the State agency and the Regional Administrator agree is not significant.

(g) *Reserve for grant increases.* In developing the project priority list the State must make provision for grant increases for projects awarded grant assistance under this subpart. A reasonable portion, not less than five percent, of each allotment for fiscal year 1975 and later years made pursuant to § 35.910 shall be reserved for grant amendments to increase grant amounts pursuant to §§ 35.935–11 and 35.955. A statement specifying the amount to be reserved for grant amendments shall be submitted by the State with the project priority list. The reserve period must be for not more than eighteen months after the date of such allotment. If any of the reserved amount remains, this amount may be utilized for the funding of additional projects, in accordance with the procedures set forth in paragraph (e) of this section.

(h) *Grant increases.* The Regional Administrator may approve a grant increase, upon application by the grantee, and upon written confirmation by the State for each application, that the grant increase is justified. The grant increases will be made from the amount reserved, by the State, for that purpose, from currently available allotments pursuant to paragraph (g) of this section.

(i) *Reserve for Step 1 and Step 2 Projects.* In developing the project priority list, the State may (but need not) make provision for an additional reserve for grant assistance for Step 1 and Step 2 projects whose selection for funding will be determined by the State agency subsequent to approval of the project list. A reasonable portion, but not more than ten percent, of each allotment for fiscal year 1975 and later years made pursuant to § 35.910 may be reserved for this purpose. A statement specifying the amount to be reserved for such grant assistance shall be submitted by the State with the project priority list. The reserve period may be for not more than eighteen months after the date of such allotment. If any of the reserved amount remains, this amount may be utilized for the funding of additional projects, in accordance with the procedures set forth in paragraph (e) of this section. The funding of Step 1 and Step 2 projects from this reserve should be consistent with the approved State strategy and should be developed in conjunction with, but need not rigidly follow, the ranking in the municipal discharge inventory.

§ 35.917 Facilities Planning (Step 1).

(a) These regulations set forth the facilities planning required as an element of the construction of publicly owned wastewater treatment works and supplement other provisions of this subpart.

(b) Facilities planning consists of those necessary plans and studies which are directly related to the construction of treatment works, in compliance with section 301 and 302 of the Act. Facilities planning will demonstrate the need for the proposed facilities and, by a systematic evaluation of feasible alternatives, will also demonstrate that the proposed measures represent the most cost-effective means of meeting established effluent and water quality goals, recognizing environmental and social considerations.

(c) Facilities planning, determined by the Regional Administrator to have been initiated prior to May 1, 1974, must be in accordance with applicable statutory requirements (see §§ 35.925–7 and 35.925–8), and such other requirements of this subpart as may be determined to be appropriate by the Regional Administrator.

(d) Full compliance with the facilities planning provisions of this subpart will be required prior to award of grant assistance for Step 2 or Step 3 where the Regional Administrator determines such planning was initiated (as determined pursuant to §§ 35.905–4 and 35.925–18) after April 30, 1974.

Grant assistance for Step 2 or 3 may be awarded prior to approval of a facilities plan for the entire geographic area to be served by the complete waste treatment system of which the proposed treatment works will be an integral part if the Regional Administrator determines that applicable statutory requirements have been met (see § 35.925–7 and 35.925–8); that the facilities planning relevant to the proposed Step 2 or 3 project has been substantially completed; and that the Step 2 or 3 project for which grant assistance is made will not be significantly affected by the completion of the facilities plan and will be a component part of the complete system: *Provided*, That the applicant agrees to complete the facilities plan on a schedule the State accepts (subject to approval by the Regional Administrator), which schedule shall be inserted as a special condition in the grant agreement.

(e) After October 31, 1974, written approval of a plan of study (see § 35.920–2 (a) (1) must be obtained prior to initiation of facilities planning. After June 30, 1975, facilities planning may not be initiated prior to approval of a Step 1 grant or approval of a plan of study accompanied by reservation of funds for a Step 1 grant (see §§ 35.925–18 and 35.905–4).

(f) Facilities planning guidelines published by the Administrator are for advisory information only.

(g) If the information required to be furnished as part of a facilities plan has been developed separately, it should be furnished and incorporated by reference in the facilities plan. Planning previously or collaterally accomplished under local, State or Federal programs will be utilized (not duplicated).

§ 35.917–1 Content of Facilities Plan.

Facilities planning which is initiated after April 30, 1974, must encompass the following to the extent deemed appropriate by the Regional Administrator:

(a) A description of the treatment works for which construction drawings and specifications are to be prepared. This description shall include preliminary engineering data, cost estimates for design and construction of the treatment works, and a schedule for completion of design and construction. The preliminary engineering data may include, to the extent appropriate, such information as a schematic flow diagram, unit processes, design data regarding detention times, flow rates, sizing of units, etc.

(b) A description of the selected complete waste treatment system(s) of which the proposed treatment works is a part. The description shall cover all elements of the system, from the service area and collection sewers, through treatment, to the ultimate discharge of treated wastewaters and disposal of sludge.

(c) Infiltration/inflow documentation in accordance with § 35.927.

(d) A cost-effectiveness analysis of alternatives for the treatment works and for the waste treatment system(s) of which the treatment works is a part. The selection of the system(s) and the choice of the treatment works on which construction drawings and specifications are to be based shall reflect the cost-effectiveness analysis. This analysis shall include:

(1) The relationship of the size and capacity of alternative works to the needs to be served, including reserve capacity;

(2) An evaluation of alternative flow and waste reduction measures;

(3) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

(4) An evaluation of the capability of each alternative to meet applicable effluent limitations. The treatment works design must be based upon not less than secondary treatment as defined by the Administrator pursuant to sections 301 (a)(1)(B) and 304(d)(1) of the Act;

(5) An identification of, and provision for, applying the best practicable waste treatment technology (BPWTT) as defined by the Administrator, based upon an evaluation of technologies included under each of the following waste treatment management techniques:

(i) Biological or physical-chemical treatment and discharge to receiving waters;

(ii) Treatment and reuse; and

(iii) Land application techniques.

All Step 2, Step 3 or combination Step 2-3 projects for publicly-owned treatment works construction from funds authorized for any fiscal year beginning after June 30, 1974, shall be based upon application of BWPTT, as a minimum. Where application of BPWTT would not meet water quality standards, the facilities plan shall provide for attaining such standards. Such provision shall consider the alternative of treating combined sewer overflows.

(6) An evaluation of the alternative means by which ultimate disposal can be effected for treated wastewater and for sludge materials resulting from the treatment process, and a determination of the means chosen.

(7) An adequate assessment of the expected environmental impact of alternatives including sites pursuant to Part 6 of this Chapter. This assessment shall be revised as necessary to include information developed during subsequent project steps.

(e) An identification of effluent discharge limitations, or where a permit has been issued, a copy of the permit for the proposed treatment works as required by the National Pollution Discharge Elimination System.

(f) Required comments or approvals of relevant State, interstate, regional, and local agencies.

(g) A brief summary of any public meeting or hearing held during the planning process including a summary of the views expressed.

(h) A brief statement demonstrating that the authorities which will be implementing the plan have the necessary legal, financial, institutional, and managerial resources available to insure the construction, operation, and maintenance of the proposed treatment works.

(i) A statement specifying that the requirements of Title VI of the Civil Rights Act of 1964 and of Part 7 of this chapter have been satisfied.

§ 35.917-2 State Responsibilities.

(a) *Facilities planning areas.* Facilities planning should focus upon the geographic area to be served by the waste treatment system(s) of which the proposed treatment works will be an integral part. The facilities plan should include that area deemed necessary to prepare an environmental assessment and to assure that the most cost-effective means of achieving the established water quality goals can be planned for and implemented. To assure that facilities planning initiated after April 30, 1974, subsequent to award of a Step 1 grant therefor, and all facilities planning initiated after October 31, 1974, will include the appropriate geographic areas, the State shall:

(1) Delineate, as a preliminary basis for planning, the boundaries of the planning areas. In the determination of each area, appropriate attention should be given to including the entire area where cost savings, other management advantages, or environmental gains may result from interconnection of individual waste treatment systems or collective management of such systems.

(2) Include maps, which shall be updated annually, showing the identified areas and boundary determinations as part of the State submission under section 106 of the Act.

(3) Consult with local officials in making the area and boundary determinations.

(b) *Facilities planning priorities.* The State shall establish funding priorities for facilities planning in accordance with §§ 35.915 and 35.554-3(a)(1).

§ 35.917-3 Federal assistance.

(a) *General.* Facilities planning initiated after April 30, 1974, subsequent to award of a Step 1 grant therefor, and all facilities planning initiated after October 31, 1974, must be developed pursuant to a plan of study (see § 35.-920-3(a)(1) approved in accordance with the requirements of this subpart prior to initiation of the facilities planning. A preapplication conference may be held in accordance with § 35.920-2.

(1) An applicant may apply for a grant for a Step 1 project for the preparation of a facilities plan, or any component part, and for other Step 1 elements required to submit a complete application for a Step 2 project (see § 35.920-3(b)). Alternatively, to the extent permitted by § 35.925-18, a grantee may be reimbursed for facilities planning costs and other Step 1 elements for which reasonable costs have been incurred in accordance with this subpart, in conjunction with the award of a grant for the subsequent Step 2, Step 2-3, or Step 3 projects.

(2) State priority determination in accordance with the approved State priority system pursuant to § 35.915 is required for Step 1 projects, just as in the case of Step 2 or Step 3 projects.

(b) *Eligibility.* Only an applicant which is eligible to receive grant assistance for subsequent phases of construction (Steps 2 and 3) and which has the legal authority to subsequently construct and manage the facility may apply for grant assistance for Step 1. If the area to be covered by the facilities plan includes more than one political jurisdiction, a grant may be awarded for a Step 1 project, as appropriate, (1) to the joint authority representing such juristions, if eligible; (2) to one qualified (lead agency) applicant; or (3) to two or more eligible jurisdictions.

(c) *Payment.* Where a grant has been awarded for the preparation of a facilities plan or other Step 1 elements, the payment schedule in the grant agreement will provide for payment upon completion of the Step 1 work or upon completion of specified tasks within the scope of the project.

(d) *Reports.* Where a grant has been awarded for facilities planning, the completion of which is expected to require more than one year, the grantee must submit a brief progress report to the Regional Administrator at three-month intervals. The progress report is to contain a minimum of narrative description, and is to describe progress in completing the approved schedule of specific tasks for the project.

§ 35.917-4 Planning scope and detail.

(a) Initially, the geographic scope of all facilities planning initiated after October 31, 1974, or facilities planning initiated after April 30, 1974, subsequent to award of a Step 1 grant therefor, shall be based upon the area delineated by the State pursuant to § 35.917-2, subject to review by the Regional Administrator. The Regional Administrator may make the preliminary delineation of the boundaries of the planning area, if the State has not done so, or may revise boundaries selected by the locality or State agency, after appropriate consultation with State and local officials.

(b) Facilities planning shall be conducted only to the extent that the Regional Administrator determines to be necessary to insure that facilities for which grants are awarded will be cost-effective and environmentally sound and to permit reasonable evaluation of grant applications and subsequent preparation of designs, construction drawings and specifications.

§ 35.917-5 Public participation.

(a) Public participation in the facilities planning process shall be consistent with Part 105 of this chapter. One or more public hearings or meetings should be held within the area to obtain public advice at the beginning of the planning process. All governmental agencies and other parties which are known to be concerned or may have an interest in the plan shall be invited to participate.

(b) A public hearing shall be held prior to the adoption of the facilities plan by the implementing governmental units. This provision shall apply to all facilities planning initiated after April 30, 1974. This public hearing for the facilities plan may satisfy the grantee hearing requirement of Part 6 of this chapter. The Regional Administrator may require the planning entity to hold additional public hearings, if needed, to more fully discuss the plan and alternatives or to afford concerned interests adequate opportunity to express their views.

(c) The time and place of the public hearing shall be conspicuously and adequately announced, generally at least 30 days in advance. In addition, a description of the water quality problems and the principal alternatives considered in the planning process shall be displayed at a convenient local site sufficiently prior to the hearing (approximately 15 days).

(d) Appropriate local and State agencies, State and regional clearinghouses, interested environmental groups and appropriate local public officials should receive written notice of public hearings.

(e) A request to waive the hearings on a facilities plan may be submitted to the Regional Administrator in writing prior to submission of the plan. Any such request will be acted upon within 30 days by the Regional Administrator. Each request must include a brief description of the alternatives, the area that will be serviced, the scope and dates of meetings and hearings previously held, and the reasons the grantee feels a public hearing would not serve the public interest.

§ 35.917–6 Acceptance by implementing governmental units.

A facilities plan submitted for approval shall include adopted resolutions or, where applicable, executed agreements of the implementing governmental units or management agencies providing for acceptance of the plan, or assurances that it will be carried out, and statements of legal authority necessary for plan implementation. Any departures from these requirements may be approved by the Regional Administrator prior to plan submission.

§ 35.917–7 State review and certification of facilities plan.

Each facilities plan must be submitted to the State agency for review. The State must certify that (a) the plan conforms with the requirements set forth in this subpart; (b) the plan conforms with any existing final basin plans approved under section 303(e) of the Act; (c) any concerned 208 planning agency has been afforded the opportunity to comment upon the plan; and (d) the plan conforms with any waste treatment management plan approved pursuant to section 208(b) of the Act.

§ 35.917–8 Submission and approval of facilities plan.

The completed facilities plan must be submitted by the State agency and approved by the Regional Administrator. Where deficiencies in a facilities plan are discovered, the Regional Administrator shall promptly notify the State and the grantee or applicant in writing of the nature of such deficiencies and of the recommended course of action to correct such deficiencies. Approval of a plan of study or a facilities plan will not constitute an obligation of the United States for any Step 2, Step 3, or combination Steps 2 and 3 project.

§ 35.917–9 Revision or amendment of facilities plan.

A facilities plan may include more than one Step 3 project and provide the basis for several subsequent Step 2, Step 2–3, or Step 3 projects. A facilities plan which has served as the basis for the award of a grant for a Step 2, Step 2–3, or Step 3 project shall be reviewed prior to the award of any grant for a subsequent project involving Step 2 or Step 3 to determine if substantial changes have occurred. If in the judgment of the Regional Administrator substantial changes have occurred which warrant revision or amendment, the plan shall be revised or amended and submitted for review in the same manner specified in this subpart.

§ 35.920 Grant application.

Grant applications will be submitted and evaluated in accordance with Part 30, Subpart B of this chapter.

§ 35.920–1 Eligibility.

Municipalities, intermunicipal agencies, States, or interstate agencies may apply for grant assistance.

§ 35.920–2 Procedure.

Preapplication assistance, including, where appropriate, a preapplication conference, should be requested from the State agency or the appropriate EPA Regional Office for each project for which State priority has been determined. An application must be submitted to the State agency for each proposed treatment works. The basic application shall meet the requirements for the project set forth in § 35.920–3. Submissions required for subsequent related projects shall be provided in the form of amendments to the basic application. Each such submission shall be submitted through the State agency, must be complete (see § 35.920–3), and must relate to a project for which priority has been determined in accordance with § 35.915. If any information required pursuant to § 35.920–3 has been furnished with an earlier application, the applicant need only incorporate by reference and, if necessary update or revise such information utilizing the previously approved application.

§ 35.920–3 Contents of application.

(a) Step 1. Facilities plan and related elements required to apply for Step 2 grant assistance. An application for a grant for Step 1 shall include:

(1) A plan of study presenting (i) the proposed planning area; (ii) an identification of the entity or entities that will be conducting the planning; (iii) the nature and scope of the proposed Step 1 project, including a schedule for the completion of specific tasks; and (iv) an itemized description of the estimated costs for the project;

(2) Proposed subagreements, or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project work;

(3) Required comments or approvals of relevant State, local, and Federal agencies (including "clearinghouse" requirements of OMB Circular A–95, promulgated at 38 FR 32874 on November 28, 1973).

(b) Step 2. Preparation of construction drawings and specifications. Prior to the award of a grant or grant amendment for a Step 2 project, the following must have been furnished:

(1) A facilities plan (including an environmental assessment in accordance with Part 6 of this chapter) in accordance with §§ 35.917 through 35.917–9.

(2) Satisfactory evidence of compliance with the user charge provisions of §§ 35.925–11 and 35.935–13;

(3) Satisfactory evidence of compliance with the industrial cost recovery provisions of §§ 35.925–12, 35.928, and 35.935–13, if applicable;

(4) A statement regarding availability of the proposed site, if relevant;

(5) Satisfactory evidence of a proposed or existing program for compliance with the Relocation and Land Acquisition Policies Act of 1970 in accordance with § 30.403(d) and Part 4 of this chapter, if applicable;

(6) Satisfactory evidence of compliance with other applicable Federal statutory and regulatory requirements (see Part 30, Subpart C of this chapter);

(7) Proposed subagreements or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project work.

(8) Required comments or approvals of relevant State, local, and Federal agencies (including "clearinghouse" requirements of OMB Circular A–95) if a grant application has not been previously submitted.

(c) *Step 3*. Building and erection of a treatment works. Prior to the award of a grant or grant amendment for a Step 3 project, each of the items specified in paragraph (b) of this section, and in addition (1) two sets of construction drawings and specifications, suitable for bidding purposes, and (2) a schedule for or evidence of compliance with §§ 35.925–10 and 35.935–12 concerning an operation and maintenance program, must have been furnished.

(d) *Step 2/3*. Design/Construct Project. Prior to the award of a grant or grant amendment for a design/construct project the items in paragraphs (b) and (c) of this section must have been furnished, except that, in lieu of construction drawings and specifications, the proposed performance specifications and other relevant design/construct criteria for the project must have been submitted.

(e) *Training facility project*. An application for grant assistance for construction of a training facility pursuant to section 109(b) of the Act shall include (1) a statement concerning the suitability of the treatment works facility for training operation and maintenance personnel for treatment works throughout one or more States; (2) a written commitment from the State agency or agencies to carry out at such facility a program of training approved by the Regional Administrator; and (3) an engineering report, including facility design data, cost estimates for design and construction of the facility, and a schedule for completion of design and construction.

§ 35.925 Limitations on award.

Before awarding initial grant assistance for any project for a treatment works through a grant or grant amendment, the Regional Administrator shall determine that all of the applicable requirements of § 35.920–3 have been met and shall further determine:

§ 35.925–1 Facilities planning.

That the facilities planning requirements set forth in §§ 35.917 through 35.917–9 have been met. Requirements set forth in § 35.150–1 and § 35.150–2 are not applicable.

§ 35.925–2 Basin plan.

That such works are in conformity with any applicable final basin plan approved in accordance with section 303 (e) of the Act.

§ 35.925–3 Priority determination.

That such works have been determined to be entitled to priority in accordance with § 35.915, and that the award of grant assistance for the proposed project will not jeopardize the funding of any treatment works of higher priority.

§ 35.925–4 State allocation.

That the award of grant assistance for the project will not cause the total of all grant assistance awarded to applicants within a State, including grant increases, to exceed the total of all allotments and reallotments available to such State pursuant to § 35.910.

§ 35.925–5 Funding and other capabilities.

That the applicant has:

(a) Agreed to pay the non-Federal project costs, and

(b) Has the legal, institutional, managerial, and financial capability to insure adequate construction, operation, and maintenance of the treatment works throughout the applicant's jurisdiction.

§ 35.925–6 Permits.

THAT if the award is for a Step 2, Step 3, or combination Step 2 and 3 project, the applicant has provided an identification of effluent discharge limitations or, if available, a copy of a permit as required by the National Pollution Discharge Elimination System.

§ 35.925–7 Design.

That the treatment works design will be (in the case of projects involving Step 2) or has been (in the case of projects for Step 3) based upon the following:

(a) The design, size, and capacity of such works are cost effective and relate directly to the needs to be served by such works, including adequate reserve capacity;

(b) Such works will meet applicable effluent limitations and attain not less than secondary treatment as defined by the Administrator pursuant to section 301(b)(1)(B) and 304(d)(1) of the Act (See Part 133 of this chapter), subject to the limitations set forth in § 35.930–4;

(c) The infiltration/inflow requirements of § 35.927 have been met; and

(d) If the initial grant assistance for the project is to be awarded from funds authorized for any fiscal year beginning after June 30, 1974, subject to the limitations set forth in § 35.930–4; (1) alternative waste treatment management techniques have been studied and evaluated to provide for the application of the best practicable waste treatment technology over the life of the works consistent with the purposes of Title II of the Act, and (2) the design has, as appropriate, taken into account and allowed to the extent practicable for the application of technology, at a later date, which will provide for the reclaiming or recycling of water or otherwise eliminate the discharge of pollutants.

§ 35.925–8 Environmental review.

That the NEPA requirements (Part 6 of this chapter), applicable to the project step, have been met. Such compliance is a basic prerequisite for Step 2, Step 3, and combination Step 2 and 3 projects. An adequate assessment of expected environmental impacts, consistent with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), is required as an integral part of facilities planning initiated after April 30, 1974, in accordance with § 35.917–1.

§ 35.925–9 Civil rights.

That if the award of grant assistance is for a project involving Step 2 or 3, the applicable requirements of Title VI, of the Civil Rights Act of 1964 (See Part 7 of this chapter) have been met.

§ 35.925–10 Operation and maintenance program.

If the award of grant assistance is for a project involving Step 3, that satisfactory provision has been made by the applicant for assuring proper and efficient operation and maintenance of the treatment works, in accordance with § 35.935–12, and that the State will have an effective operation and maintenance monitoring program to assure that treatment works assisted under this subpart, comply with applicable permit and grant conditions.

§ 35.925–11 User charges.

That, in the case of grant assistance awarded after March 1, 1973, for a project involving Step 2 or Step 3, an approvable plan and schedule of implementation have been developed for a system of user charges to assure that each recipient of waste treatment services within the applicants service area will pay its proportionate share of the costs of operation and maintenance (including replacement as defined in § 35.905–17) of all waste treatment service provided by the applicant and the applicant must agree that such system(s) will be maintained. See Appendix B to this subpart.

§ 35.925–12 Industrial cost recovery.

(a) That, in the case of any grant assistance awarded after March 1, 1973, for a project involving Step 2 or Step 3, signed letters of intent have been received by the applicant from each significant industrial user to pay that portion of the grant amount allocable to the treatment of its wastes. Each such letter shall also include a statement of the industrial user's intended period of use of the treatment works. A significant industrial user is one that will contribute greater than 10 percent of the design flow or design pollutant loading of the treatment works. In addition, the applicant must agree to require all industrial users to pay that portion of the grant amount allocable to the treatment of wastes from such users.

(b) Projects awarded grant assistance prior to March 2, 1973 are subject to the requirements of § 35.835–5 in lieu of paragraph (a) of this section.

§ 35.925–13 Sewage Collection System.

That, if the project is for, or includes, sewage collection system work, such work (a) is for replacement or major rehabilitation of an existing sewer system pursuant to § 35.927–3(a) and is necessary to the total integrity and performance of the waste treatment works servicing such community, or (b) is for a new sewer system in a community in existence on October 18, 1972, with sufficient existing or planned capacity to adequately treat such collected sewage. Replacement or major rehabilitation of an existing sewer system may be approved only if cost effective and must result in a sewer system design capacity equivalent only to that of the existing system plus a reasonable amount for future growth. A community, for purposes of this section, would include any area with substantial human habitation on October 18, 1972. No award may be made for a new sewer system in a community in existence on October 18, 1972 unless it is further determined by the Regional Administrator that the bulk (generally two-thirds) of the flow design capacity through the sewer system will be for waste waters originating from the community (habitation) in existence on October 13, 1972.

§ 35.925–14 Compliance with Environmental Laws.

That the treatment works will comply with all pertinent requirements of the Clean Air Act and other applicable Federal, State and local environmental laws and regulations.

§ 35.925–15 Treatment of industrial wastes.

That the allowable project costs do not include costs allocable to the treatment for control or removal of pollutants in wastes introduced into the treatment works by industrial users unless the applicant is required to remove such pollutants introduced from non-industrial sources; and that the project is included in a waste treatment system, a principal purpose of which project and system is the treatment of domestic wastes of the entire community, area, region or district concerned. A "waste treatment system", for purposes of this section, means one or more treatment works which provide integrated but not necessarily interconnected waste disposal for the community, area, region or district. See the pretreatment standards set forth in Part 128 of this Chapter.

§ 35.925–16 Federal activities.

That the allowable project costs do not include costs allocable to the treatment of wastes from major activities of the Federal Government, which another Federal Agency has agreed to pay. Such Federal agencies may extend, over a period of years, their contributions to support capital costs incurred by municipal treatment facilities which provide service to them.

§ 35.925–17 Retained amounts for reconstruction and expansion.

That the allowable project costs have been reduced by an amount equal to the unexpended balance of the amounts retained by the applicant for future reconstruction and expansion pursuant to § 35.928–2, together with interest earned thereon.

§ 35.925–18 Limitation upon project costs incurred prior to award.

That project construction has not been initiated prior to the approved date of initiation of construction (as defined in § 35.905–4), except as otherwise provided in this section. Generally, payment is not authorized for costs incurred prior to the approved date of initiation of construction, which shall be established in the grant agreement, in accordance with paragraphs (a), (b), and (c) of this section.

(a) Steps 1 or 2:

(1) No prior approval or prior grant award is required for Step 1 or Step 2 work initiated prior to November 1, 1974; payment for all such allowable costs incurred after the approved date of initiation of construction is authorized in conjunction with the first award of grant assistance.

(2) In the case of Step 1 or Step 2 project work initiated after October 31, 1974, no payment is authorized for:

(i) Step 1 costs incurred prior to the date of approval of a plan to study (see §§ 35.917 and 35.930–3(a)(1)); and

(ii) Step 2 costs incurred prior to the date of approval of a facilities plan (see §§ 35.917 and 35.930–3(b)(1)); payment for all Step 1 or Step 2 costs incurred after such dates of approval are authorized in conjunction with the first award of grant assistance.

(3) Where Step 1 or Step 2 project work is initiated after June 30, 1975, no grant assistance for the Step 1 or Step 2 project work may be awarded unless such award precedes initiation of the project work: *Provided*, That in lieu of award of a Step 1 grant after June 30, 1975, the State agency may request the Regional Administrator to reserve funds for Step 1 grant assistance (based upon approval of the plan of study) and to defer award of grant assistance for Step 1 work, which award, however, must in any event be made within the allotment period for the reserved funds.

(b) Step 3: Except as otherwise provided in this subparagraph, no grant assistance for a Step 3 project may be awarded unless such award precedes initiation of the Step 3 construction. Advance acquisition of major equipment items requiring long lead times, or advance construction of minor portions of treatment works, in emergencies or instances where delay could result in significant cost increases, may be approved by the Regional Administrator, but only (1) if the applicant submits a written and adequately substantiated request for approval, and (2) if written approval by the Regional Administrator is obtained prior to initiation of the advance acquisition or advance construction.

(c) The approval of a plan of study, a facilities plan, or of advance acquisition of equipment or advance construction will not constitute a commitment for approval of grant assistance for a subsequent treatment works project, but will allow payment for the previously approved costs as allowable project costs upon subsequent award of grant assistance, if requested prior to grant award (see § 35.945(a)). In instances where such approval is obtained, the applicant proceeds at its own risk, since payment for such costs cannot be made unless and until grant assistance for the project is awarded.

§ 35.925–19 Section 208: Agencies and plans.

That, pursuant to section 208(d) of the Act, after a waste treatment management agency has been designated for an area, and a final plan for such area has been approved, the applicant is the designated agency and the treatment works project is in conformity with such plan.

§ 35.927 Sewer system evaluation and rehabilitation.

(a) All applicants for grant assistance awarded after July 1, 1973, must demonstrate to the satisfaction of the Regional Administrator that each sewer system discharging into the treatment works project for which grant application is made is not or will not be subject to excessive infiltration/inflow. The determination whether excessive infiltration/inflow exists, may take into account, in addition to flow and related data, other significant factors such as cost-effectiveness (including the cost of substantial treatment works construction delay, see Appendix A to this subpart), public health emergencies, the effects of plant bypassing or overloading, or relevant economic or environmental factors.

(b) The determination whether or not excessive infiltration/inflow exists will generally be accomplished through a sewer system evaluation consisting of (1) certification by the State agency, as appropriate; and, when necessary (2) an infiltration/inflow analysis; and, if appropriate, (3) a sewer system evaluation survey followed by rehabilitation of the sewer system to eliminate an excessive infiltration/inflow defined in the sewer system evaluation. Information submitted to the Regional Administrator for such determination should be the minimum necessary to enable a judgment to be made.

(c) Guidelines on sewer system evaluation published by the Administrator provide further advisory information.

§ 35.927–1 Infiltration/Inflow analysis.

(a) The infiltration/inflow analysis shall demonstrate the non-existence or possible existence of excessive infiltration/inflow in each sewer system tributary to the treatment works. The analysis should identify the presence, flow rate, and type of infiltration/inflow conditions, which exist in the sewer systems. Information to be obtained and evaluated in the analysis should include, to the extent appropriate, the following:

(1) Estimated flow data at the treatment facility, all significant overflows and bypasses, and, if necessary, flows at key points within the sewer system.

(2) Relationship of existing population and industrial contribution to flows in the sewer system.

(3) Geographical and geological conditions which may affect the present and future flow rates or correction costs for the infiltration/inflow.

(4) A discussion of age, length, type, materials of construction and known physical condition of the sewer system.

(b) For determination of the possible existence of excessive infiltration/inflow, the analysis shall include an estimate of the cost of eliminating the infiltration/inflow conditions. These costs shall be compared with estimated total costs for transportation and treatment of the infiltration/inflow. Cost-Effectiveness Analysis Guidelines (Appendix A to this subpart), which contain advisory information, should be consulted with respect to this determination.

(c) If the infiltration/inflow analysis demonstrates the existence or possible existence of excessive infiltration/inflow a detailed plan for a sewer system evaluation survey shall be included in the analysis. The plan shall outline the tasks to be performed in the survey and their estimated costs.

§ 35.927–2 Sewer system evaluation survey.

(a) The sewer system evaluation survey shall consist of a systematic examination of the sewer systems to determine the specific location, estimated flow rate, method of rehabilitation and cost of rehabilitation versus cost of transportation and treatment for each defined source of infiltration/inflow.

(b) The results of the sewer system evaluation survey shall be summarized in a report. In addition, the report shall include:

(1) A justification for each sewer section cleaned and internally inspected.

(2) A proposed rehabilitation program for the sewer systems to eliminate all defined excessive infiltration/inflow.

§ 35.927–3 Rehabilitation.

(a) The scope of each treatment works project defined within the Facilities Plan as being required for implementation of the Plan, and for which Federal assistance will be requested, shall define (1) any necessary new treatment works construction, and (2) any rehabilitation work determined by the sewer system evaluation to be necessary for the elimination of excessive infiltration/inflow. However, rehabilitation which should be a part of the applicant's normal operation and maintenance responsibilities shall not be included within the scope of a Step 3 treatment works project.

(b) Grant assistance for a Step 3 project segment consisting of rehabilitation work may be awarded concurrently with Step 2 work for the design of the new treatment works construction.

§ 35.927–4 Sewer use ordinance.

Each applicant for grant assistance for a Step 2, Step 3, or combination Steps 2 and 3 project shall demonstrate to the satisfaction of the Regional Administrator that a sewer use ordinance or other legally binding requirement will be enacted and enforced in each jurisdiction served by the treatment works project before the completion of construction. The ordinance shall prohibit any new connections from inflow sources into the sanitary sewer portions of the sewer system and shall ensure that new sewers and connections to the sewer system are properly designed and constructed.

§ 35.927–5 Project procedures.

(a) *State certification*. The State agency may (but need not) certify that excessive infiltration/inflow does or does not exist. The Regional Administrator will determine that excessive infiltration/inflow does not exist on the basis of State certification, if he finds that the State had adequately established the basis for its certification through submission of only the minimum information necessary to enable a judgment to be made. Such information could include a preliminary review by the applicant or State, for example, of such parameters as per capita design flow, ratio of flow to design flow, flow records or flow estimates, bypasses or overflows, or summary analysis of hydrological, geographical, and geological conditions, but this review would not usually be equivalent to a complete infiltration/inflow analysis. State certification must be on a project-by-project basis. If the Regional Administrator determines on the basis of State certification that the treatment works is or may be subject to excessive infiltration/inflow, no Step 2 or Step 3 grant assistance may be awarded except as provided in paragraph (c) of this section.

(b) *Pre-award sewer system evaluation*. Generally, except as otherwise provided in paragraph (c) of this section, an adequate sewer system evaluation, consisting of a sewer system analysis and, if required, an evaluation survey, is an essential element of Step 1 facilities planning and is a prerequisite to the award of Step 2 or 3 grant assistance. If the Regional Administrator determines through State Certification or an infiltration/inflow analysis that excessive infiltration/inflow does not exist, Step 2 or 3 grant assistance may be awarded. If on the basis of State certification or the infiltration/inflow analysis, the Regional Administrator determines that possible excessive infiltration/inflow exists, an adequate sewer system evaluation survey and, if required, a rehabilitation program must be furnished, except as set forth in paragraph (c) of this section before grant assistance for Step 2 or 3 can be awarded. A Step 1 grant may be awarded for the completion of this segment of Step 1 work, and, upon completion of Step 1, grant assistance for a Step 2 or 3 project (for which priority has been determined pursuant to § 35.915) may be awarded.

(c) *Exception*. In the event it is determined by the Regional Administrator that the treatment works would be regarded (in the absence of an acceptable program of correction) as being subject to excessive or possible excessive infiltration/inflow, grant assistance may be awarded provided that the applicant establishes to the satisfaction of the Regional Administrator that the treatment works project for which grant application is made will not be significantly changed by any subsequent rehabilitation program or will be a component part of any rehabilitated system: *Provided*, That the applicant agrees to complete the sewer system evaluation and any resulting rehabilitation on an implementation schedule the State accepts (subject to approval by the Regional Administrator), which schedule shall be inserted as a special condition in the grant agreement. Compliance with this schedule shall be accomplished pursuant to § 35.935–16 and § 30.304 of this chapter.

(d) Municipalities may submit the infiltration/inflow analysis and when appropriate the sewer system evaluation survey, through the State agency, to the Regional Administrator for his review at any time prior to application for a treatment works grant. Based on such a review, the Regional Administrator shall provide the municipality with a written response indicating either his concurrence or nonconcurrence. The Regional Administrator must concur with the sewer system evaluation survey plan before the work is performed for the survey to be an allowable cost.

§ 35.928 Industrial cost recovery.

The system for industrial cost recovery shall be approved by the Regional Administrator and shall be implemented and maintained by the grantee in accordance with § 35.935–12 and the following requirements.

§ 35.928–1 Recovered amounts.

(a) Each year during the industrial cost recovery period, each industrial user of the treatment works shall pay its share of the total amount of the grant and any grant amendment awarded pursuant to this subpart, divided by the recovery period.

(b) The industrial cost recovery period shall be equal to 30 years or the useful life of the treatment works, whichever is less.

(c) Payments shall be made by industrial users no less often than annually. The first payment by an industrial user shall be made not later than 1 year after such user begins use of the treatment works.

(d) An industrial user's share shall be based on all factors which significantly influence the cost of the treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included to insure a proportional distribution of the grant assistance allocable to industrial use to all industrial users of the treatment works. As a minimum, an industry's share shall be proportional to its flow, in relation to treatment works flow capacity.

(e) If there is a substantial change in the strength, volume, or delivery flow rate characteristics introduced into the treatment works by an industrial user, such user's share shall be adjusted accordingly.

(f) If there is an expansion or upgrading of the treatment works, each existing industrial user's share shall be adjusted accordingly.

(g) An industrial user's share shall include only that portion of the grant assistance allocable to its use or to capacity firmly committed for its use.

(h) All unallocated treatment works capacity must conform with the requirements of section 204(a)(5) of the Act. Cost-effectiveness guidelines are published as Appendix A to this subpart to furnish additional advisory information concerning the implementation of section 212(2)(C) of the Act.

(i) An industrial user's share shall not include an interest component.

§ 35.928–2 Retained amounts.

(a) The grantee shall retain 50 percent of the amounts recovered from industrial users. The remainder, together with any interest earned thereon, shall be returned to the U.S. Treasury on an annual basis.

(b) A minimum of 80 percent of the retained amounts, together with interest earned thereon, shall be used solely for the eligible costs (in accordance with § 35.940) of the expansion or reconstruction of treatment works associated with the project and necessary to meet the requirements of the Act. The grantee shall obtain the written approval of the Regional Administrator prior to commitment of the retained amounts for any expansion and reconstruction. The remainder of the retained amounts may be used as the grantee sees fit.

(c) Pending use, the grantee shall invest the retained amounts for reconstruction and expansion in: (1) Obligations of the U.S. Government; or (2) obligations guaranteed as to principal and interest by the U.S. Government or any agency thereof; or (3) shall deposit such amounts in accounts fully collateralized by obligations of the U.S. Government or by obligations fully guaranteed as to principal and interest by the U.S. Government or any agency thereof.

§ 35.930 Award of grant assistance.

Approval by the Regional Administrator of an application or amendments thereto through execution of a grant agreement (including a grant amendment), in accordance with § 30.305 of this subchapter, shall constitute a contractual obligation of the United States for the payment of the Federal share of the allowable project costs, as determined by the Regional Administrator. Information concerning the approved project furnished in accordance with § 35.920–3 shall be deemed to be incorporated in the grant agreement.

§ 35.930–1 Types of projects.

(a) The Regional Administrator may award grant assistance for the following types of projects pursuant to § 35.925:

(1) *Step 1.* A facilities plan and/or related elements required to apply for Step 2 grant assistance (see § 35.920–3(b)): *Provided*, That he determines that the applicant has submitted the items required pursuant to § 35.920–3(a);

(2) *Step 2.* Preparation of construction drawings and specifications: *Provided*, That he determines that the applicant has submitted the items required pursuant to § 35.920–3(b);

(3) *Step 3.* Building and erection of a treatment works: *Provided*, That he determines that the applicant has submitted the items required pursuant to § 35.920–3(c); or

(4) *Steps 2 and 3.* A combination of design (Step 2) and construction (Step 3) for a treatment works in the case of grants awarded after March 1, 1973:

(i) Where the Regional Administrator determines that compelling water quality enforcement considerations or public health emergencies warrant award of such grant assistance to assure expeditious construction of such treatment works, or

(ii) Where the Regional Administrator determines that award of such grant assistance will minimize administrative requirements in the case of projects not requiring a substantial amount of Federal assistance: *Provided*, That the award authority provided by this subparagraph (4) is subject to the following conditions: that (A) the Regional Administrator determines that the applicant has submitted the items pursuant to § 35.920–3 (b); (B) the United States will be contractually obligated to pay only the Federal share of the approved Step 2 work and will not be contractually obligated to pay the Federal share of Step 3 project costs unless and until the plans and specifications developed during Step 2 are approved; and (C) funds fiscally obligated for Step 3 will be deobligated unless two sets of construction drawings and specifications suitable for bidding purposes are submitted to the Regional Administrator and approved prior to initiation of construction for the building and erection of the treatment works.

(5) *Step 2/3:* Design/construction of treatment works (Steps 2 and 3): *Provided*, That he determines that the applicant has submitted the items required pursuant to § 35.920–3(d): *And further provided*, That such grant assistance must be awarded pursuant to EPA guidelines for the award of design/construct projects, and that the requirements of such guidelines are met.

(b) The Regional Administrator may award Federal assistance by a grant or grant amendment from any allotment or reallotment available to a State pursuant to § 35.910 for payment of 100 percent of any cost of construction of a treatment works (for not more than one facility in any State) required to train and upgrade waste treatment works operation and maintenance personnel, from one or more States, pursuant to section 109(b) of the Act: *Provided*, That the Federal cost of any such training facility shall not exceed $250,000.

§ 35.930–2 Grant amount.

The amount of grant assistance shall be set forth in the grant agreement. The grant amount may not exceed the amount of funds available from the State allotments and reallotments pursuant to § 35.910. Grant payments will be limited to the Federal share of allowable project costs incurred within the grant amount or any increases in such amount effected through grant amendments in accordance with § 35.955, pursuant to the negotiated payment schedule included in the grant agreement.

§ 35.930–3 Grant term.

The grant agreement shall establish the period within which the project must be completed, in accordance with § 30.305–1 of this chapter, subject to excusable delay.

§ 35.930–4 Project scope.

The grant agreement must define the scope of the project for which Federal assistance is awarded under the grant. The project scope must include a step or an identified segment thereof. With respect to any grant assistance for a treatment works project which is initially funded from funds allocated for any fiscal year beginning after June 30, 1974, provision must be made for the application of best practicable waste treatment technology over the life of the treatment works. However, a grant may be made for a segment of Step 3 treatment works construction, when that segment in and of itself does not provide for achievement of applicable effluent discharge limitations (secondary treatment, best practicable waste treatment technology, or water quality effluent limitations), provided that: (a) The segment is to be a component of an operable treatment works which will provide for achievement of the applicable effluent discharge limitations, and (b) a commitment for completion of the complete treatment works is submitted to the Regional Administrator and is incorporated as a special condition in the grant agreement.

§ 35.930–5 Federal share.

The grant shall be 75 percent of the estimated total cost of construction of the project approved by the Regional Administrator in the grant agreement, except as otherwise provided in §§35.925–15, 35.925–16, 35–925–17, and 35.930–1(b).

§ 35.930–6 Limitation on Federal share.

The grantee must exert its best efforts to perform the project work as specified in the grant agreement within the approved cost ceiling. If at any time the grantee has reason to believe that the costs which it expects to incur in the performance of the project will exceed or be substantially less than the then approved estimated total project cost, the grantee must notify the Regional Administrator and the State agency promptly in writing to that effect, giving the revised estimate of such total cost for the performance of the project then or as soon thereafter as practicable, pursuant to 40 CFR 30.900. Delay in submission of such notice and excess cost information may prejudice approval of an increase in the grant amount. The United States shall not be obligated to pay for costs incurred in excess of the approved grant amount or any amendment thereof until the State has approved an increase in the grant amount from available allotments and the Regional Administrator has approved such increase through issuance of a written grant amendment pursuant to §§ 35.915 and 35.955. Grant payments will be made pursuant to § 35.945.

§ 35.935 Grant conditions.

In addition to the EPA General Grant Conditions (Subpart C of Part 30 and Appendix A to this subchapter), each treatment works grant shall be subject to the following conditions:

§ 35.935–1 Non-Federal construction costs.

The grantee agrees to pay, pursuant to section 204(a)(4) of the Act, the non-Federal costs of treatment works construction associated with the project and commits itself to complete the construction of the operable treatment works (see § 35.905–15) and complete waste treatment system (see § 35.905–3) of which the project is a part.

§ 35.935–2 Procurement; nonrestrictive specifications.

(a) *General.* The grantee must comply with § 35.938 of this subpart in the construction of any Step 3 or Step 2+3 project. Performance of Step 2 and Step 3 project work may not be accomplished by force account except for (1) Step 1 or Step 2 infiltration/inflow work for which prior written approval has been obtained in accordance with §§ 35.927 to 35.927-5 and (2) segments of Step 3 work, the cost of which is estimated to be under $25,000. The Regional Administrator will cause appropriate review of grantee procurement methods to be made from time to time.

(b) *Nonrestrictive specifications.* No specification for bids or statement of work in connection with such works shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal." The single base bid method of solicitation for equipment and parts for determination of a low, responsive bidder may not be utilized. With regard to materials, if a single material is specified, the grantee must be prepared to substantiate the basis for the selection of the material.

§ 35.935-3 Bonding and insurance.

On contracts for the building and erection of treatment works (Step 3) exceeding $100,000, each bidder must furnish a bid guarantee equivalent to 5 percent of the bid price. In addition the contractor awarded either a design/construct contract or a construction contract for Step 3 must furnish performance and payment bonds, each of which shall be in an amount not less than 100 percent of the contract price. Construction contracts less than $100,000 shall be subject to State and local requirements relating to bid guarantees, performance and payment bonds. Contractors should obtain such construction insurance (e.g., fire and extended coverage, workmen's compensation, public liability and property damage, and "all risk" builders risk) as is customary and appropriate.

§ 35.935-4 State and local laws.

The construction of the project, including the letting of contracts in connection therewith, shall conform to the applicable requirements of State, territorial, and local laws and ordinances to the extent that such requirements do not conflict with Federal laws and this subchapter.

§ 35.935-5 Davis-Bacon and related statutes.

In the case of any project involving Step 3, the grantee must consult with the Regional Administrator prior to issuance of invitation for bids concerning compliance with Davis-Bacon and related statutes required pursuant to § 30.403 (a), (b), and (c) of this chapter.

§ 35.935-6 Equal employment opportunity.

Generally, contracts involving Step 3, of $10,000 and above, are subject to equal employment opportunity requirements under Executive Order 11246, including rules, regulations and orders issued thereunder (see Part 8 of this chapter). The grantee must consult with the Regional Administrator concerning equal employment opportunity requirements prior to issuance of invitation for bids where the cost of construction work is estimated to be more than $1,000,000, or where required by the grant agreement.

§ 35.935-7 Access.

Any contract for Step 1, Step 2 or Step 3 work must provide that representatives of the Environmental Protection Agency and the State will have access to the work whenever it is in preparation or progress and that the contractor will provide proper facilities for such access and inspection. Such contract must also provide that the Regional Administrator, the Comptroller General of the United States, or any authorized representative shall have access to any books, documents, papers, and records of the contractor which are pertinent to the project for the purpose of making audit, examination, excerpts, and transcriptions thereof.

§ 35.935-8 Supervision.

In the case of any project involving Step 3, the grantee will provide and maintain competent and adequate engineering supervision and inspection of the project to insure that the construction conforms with the approved plans and specifications.

§ 35.935-9 Project completion.

The grantee agrees to expeditiously initiate and complete the project or cause it to be constructed and completed in accordance with the grant agreement and application approved by the Regional Administrator. The Regional Administrator must terminate the grant if initiation of construction for a Step 3 project has not occurred within one year after award of grant assistance for such project: *Provided,* That the Regional Administrator may defer such termination for not more than six additional months if he determines that there is good cause for the delay in initiation of project construction.

§ 35.935-10 Copies of contract documents.

In addition to the notification of project changes pursuant to § 30.900-1 of this chapter, a copy of any prime contract or modification thereof and of revisions to plans and specifications must be promptly submitted to the Regional Administrator.

§ 35.935-11 Project changes.

In addition to the notification of project changes required pursuant to § 30.900-1 of this chapter, prior approval by the Regional Administrator and the State agency is required for project changes which may (a) substantially alter the design and scope of the project, (b) alter the type of treatment to be provided, (c) substantially alter the location, size, capacity, or quality of any major item of equipment; or (d) increase the amount of Federal funds needed to complete the project: *Provided,* That prior EPA approval is not required for changes to correct minor errors, minor changes, or emergency changes. No approval of a project change pursuant to § 35.900 of this chapter shall commit or obligate the United States to any increase in the amount of the grant of payments thereunder unless a grant increase is approved pursuant to § 35.955. The preceding sentence shall not preclude submission or consideration of a request for a grant amendment pursuant to § 30.901 of this chapter.

(a) The grantee must make adequate provisions satisfactory to the Regional Administrator for assuring economic, effective, and efficient operation and maintenance of such works in accordance with a plan of operation approved by the State water pollution control agency or, as appropriate, the interstate agency, after construction thereof.

(b) As a minimum, such plan shall include provision for: (1) An operation and maintenance manual for each facility, (2) an emergency operating and response program, (3) properly trained management, operation and maintenance personnel, (4) adequate budget for operation and maintenance, (5) operational reports, and (6) provisions for laboratory testing adequate to determine influent and effluent characteristics and removal efficiencies.

(c) The Regional Administrator shall not pay (1) more than 50 percent of the Federal share of any Step 3 project unless the grantee has furnished a draft of the operation and maintenance manual for review, or adequate evidence of timely development of such a draft, or (2) more than 90 percent of the Federal share unless the grantee has furnished a satisfactory final operation and maintenance manual.

§ 35.935-13 User charges and industrial cost recovery.

(a) The grantee must obtain the approval of the Regional Administrator of the system of industrial cost recovery (see § 35.928) and of the system of user charges. The Regional Administrator shall not pay more than 50 percent of the Federal share of any Step 3 project unless the grantee has submitted adequate evidence of timely development of its system(s) of user charges and industrial cost recovery nor more than 80 percent of such Federal share unless the Regional Administrator has approved such system(s).

(b) The Regional Administrator may approve a user charge system in accordance with the following criteria:

(1) The user charge system must result in the distribution of the cost of operation and maintenance of treatment works within the grantee's precise area to each user (or user class) in proportion to such user's contribution to the total wastewater loading of the treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included as the basis for the user's contribution to ensure a proportional distribution of operation and maintenance costs to each user (or user class).

(2) For the first year of operation, operation and maintenance costs shall be based upon past experience for existing treatment works or some other rational method that can be demonstrated to be applicable.

(3) The grantee shall review user charges annually and revise them periodically to reflect actual treatment works operation and maintenance costs.

(4) The user charge system must generate sufficient revenue to offset the cost of all treatment works operation and maintenance provided by the grantee.

(5) The user charge system must be incorporated in one or more municipal legislative enactments or other appropriate authority. If the project is a regional treatment works accepting wastewaters from treatment works owned by others, then the subscribers receiving waste treatment services from the grantee shall have adopted user charge systems. Such user charge systems shall also be incorporated in the appropriate municipal legislative enactments or other appropriate authority.

(c) Upon approval of a grantee's system(s) of user charges and industrial cost recovery, implementation and maintenance of such approved system(s) and implementation schedules therefor, shall become a condition of the grant and the grantee shall be subject to the provisions with respect to non-compliance with grant conditions of § 30.404 of this chapter.

(d) The grantee must maintain such records as are necessary to document such compliance.

(e) Guidelines containing illustrative examples of acceptable user charge and industrial cost recovery systems may be consulted for advisory information. The user charge guidelines are contained in Appendix B to this subpart. Cost Recovery Guidelines are published separately and may be obtained from the EPA Regional Office.

§ 35.935–14 Final inspection.

The grantee must notify the Regional Administrator through the State Agency of the completion of Step 3 project construction. The Regional Administrator shall cause final inspection to be made within 60 days of the receipt of the notice. Upon completion of the final inspection and upon determination by the Regional Administrator that the treatment works have been satisfactorily constructed in accordance with the grant agreement, the grantee may make a request for final payment pursuant to § 35.945(e).

§ 35.935–15 Utilization of small and minority businesses.

It is the policy of the Environmental Protection Agency that grantees must utilize to the maximum practical extent small and minority businesses in procurement under grants involving Steps 1, 2, or 3. In the case of grants of $10,000,000 or more grantees must institute an affirmative program for the utilization of small and minority businesses prior to award of the grant.

§ 35.935–16 Sewer use ordinance and evaluation/rehabilitation program.

The grantee must obtain the approval of the Regional Administrator of its sewer use ordinance, pursuant to § 35.927–4 of this subpart. The Regional Administrator shall not pay more than 80 percent of the Federal share of any Step 3 project unless he has approved the grantee's sewer use ordinance, and the grantee is complying with the sewer system evaluation and rehabilitation schedule incorporated in the grant agreement pursuant to § 35.927–5.

§ 35.935–17 Training facility.

If assistance has been provided for the construction of a treatment works required to train and upgrade waste treatment works operation and maintenance personnel, pursuant to § 35.930–1(b) and 35.920–3(e), the grantee must provide assurance that the treatment works will be operated as such a training facility for a period of at least ten years, upon completion of construction.

§ 35.937 Contracts for personal and professional services. [Reserved]

§ 35.938 Construction contracts of grantees.

§ 35.938–1 Applicability.

This section applies to contracts awarded by grantees for any Step 3 project or Step 2+3 project, except personal and professional service contracts.

§ 35.938–2 Performance by contract.

It is the policy of the Environmental Protection Agency to encourage free and open competition with regard to project work performed by contract. The project work shall be performed under one or more contracts awarded by the grantee to private firms, except for force account work authorized by § 35.935–2. The following sections define EPA policy for the implementation of the procurement standards set forth in Office of Management and Budget Circular No. A–102, Attachment O (printed at 38 FR 21345, August 7, 1973). Grantee procurement systems should as a minimum provide for the following:

§ 35.938–3 Type of contract.

Each contract shall be either a fixed-price (lump sum) contract or fixed-rate (unit price) contract, or a combination of the two, unless the Regional Administrator gives advance written approval for the grantee to use some other method of contracting. The cost-plus-a-percentage of cost method of contracting shall not be used.

§ 35.938–4 Formal advertising.

Each contract shall be awarded by means of formal advertising, unless negotiation is permitted in accordance with § 35.938–5. Formal advertising shall be in accordance with the following:

(a) *Adequate public notice.* The grantee will cause adequate notice to be given of the solicitation by publication in newspapers or journals of general circulation, beyond the grantee's locality (Statewide, generally) inviting bids on the project work, and stating the method by which bidding documents may be obtained and/or examined. Where the estimated prospective cost of Step 3 construction is ten million dollars or more, such notice must generally be published in trade journals of Nationwide distribution. The grantee should in addition solicit bids directly from bidders, if it maintains a bidders list.

(b) *Adequate time for preparing bids.* Adequate time, generally not less than 30 days must be allowed between the date when public notice pursuant to paragraph (a) of this section is first published and the date by which bids must be submitted. Bidding documents (including specifications and drawings) shall be available to prospective bidders from the date when such notice is first published.

(c) *Adequate bidding documents.* A reasonable number of bidding documents (invitations for bid) shall be prepared by grantee and shall be furnished upon request on a first-come, first-served basis. A complete set of bidding documents shall be maintained by grantee and shall be available for inspection and copying by any party. Such bidding documents shall include:

(1) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule. (Drawings and specifications may be made available for inspection instead of being furnished.);

(2) The terms and conditions of the contract to be awarded;

(3) A clear explanation of the method of bidding and the method of evaluation of bid prices, and the basis and method for award of the contract;

(4) Responsibility requirements or criteria which will be employed in evaluating bidders; *Provided,* That an experience requirement or performance bond may not be utilized unless adequately justified under the particular circumstances by the grantee;

(5) The following statement:

> Any contract or contracts awarded under this Invitation for Bids are expected to be funded in part by a grant from the United States Environmental Protection Agency. Neither the United States nor any of its de-

partments, agencies or employees is or will be a party to this Invitation for Bids or any resulting contract.;

and

(6) A copy of § 35.938 and § 35.939.

(d) *Sealed bids*. The grantee shall provide for bidding by sealed bid and for the safeguarding of bids received until public opening.

(e) *Amendments to bidding documents*. If grantee desires to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the amendments shall be communicated in writing to all firms who have obtained bidding documents in time to be considered prior to the bid opening time; when appropriate, the period for submission of bids shall be extended.

(f) *Bid modifications*. A firm which has submitted a bid shall be allowed to modify or withdraw its bid prior to the time of bid opening.

(g) *Public opening of bids*. Grantee shall provide for a public opening of bids at the place, date and time announced in the bidding documents.

(h) *Award to the low responsive, responsible bidder*. (1) After bids are opened, they shall be evaluated by grantee in accordance with the methods and criteria set forth in the bidding documents.

(2) Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder.

(3) If award is intended to be made to a firm which did not submit the lowest bid, a written statement shall be prepared prior to any award and retained by the grantee explaining why each lower bidder was deemed not responsive or nonresponsive.

(4) State or local laws, ordinances, regulations or procedures which are designed or operate to give local or in-State bidders preference over other bidders shall not be employed in evaluating bids.

§ 35.938–5 Negotiation.

Negotiation of contracts (i.e., award of contracts by any method other than formal advertising) is authorized if it is impracticable and infeasible to use formal advertising. Negotiated contracts must be competitively awarded to the maximum practicable extent. Generally, procurements may be negotiated by the grantee if:

(a) Public exigency will not permit the delay incident to advertising (e.g., an emergency procurement);

(b) The material or service to be procured is available from only one person or firm (and, if the procurement is expected to aggregate more than $5,000, the Regional Administrator has given prior approval);

(c) The aggregate amount involved does not exceed $2,500, (except as provided in paragraph (b) of this section);

(d) The procurement is for personal or professional services, or for any service to be rendered by a university or other educational institution;

(e) No responsive, responsible bids at acceptable price levels have been received after formal advertising, and the Regional Administrator has given advance written approval;

(f) The procurement is for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for highly perishable materials, resale, or for technical or specialized supplies requiring substantial initial investment for manufacture. Any negotiated procurement under this paragraph (f) of this section, other than for perishable materials must be approved in advance by the Regional Administrator; or

(g) Negotiation of contracts is otherwise atuhorized by Federal law, rules, or regulations or approved prior to the procurement by the Regional Administrator.

§ 35.939 Compliance with procurement requirements.

(a) *Grantee responsibility*. The grantee is primarily responsible for selecting the low, responsive, and responsible bidder in accordance with applicable requirements of State, territorial, or local laws or ordinances, as well as the specific requirements of Federal law or this subchapter directly affecting the procurement (for example, the nonrestrictive specification requirement of § 35.935–2(b) or the equal employment opportunity requirement of § 35.935–6) and for the initial resolution of complaints based upon alleged violations. If complaint is made to the Regional Administrator concerning an alleged violation of Federal law or this subchapter in the procurement of construction services or materials for a project involving Step 3, the complaint will be referred to the grantee for resolution. The grantee must promptly determine each such complaint upon its merits permitting the complaining party as well as any other interested party who may be adversely affected, to state in writing or at a conference the basis for their views concerning the proposed procurement. The grantee must promptly furnish to the complaining party and to other affected parties, by certified mail, a written summary of its determination, substantiated by an engineering and legal opinion, providing a justification for its determination. See paragraph (c) of the section for applicable time limitations.

(b) *Regional Administrator responsibility*. A party adversely affected by an adverse determination of a grantee made pursuant to paragraph (a) of this section, concerning an alleged violation of a specific requirement of Federal law or this subchapter directly affecting the procurement of construction services or material for a project involving Step 3 may request the Regional Administrator to review an adverse determination, subject to the time limitation set forth in paragraph (c) of this section. A copy of the written adverse determination and supporting justification shall be transmitted with the request for review, together with a statement of the specific reasons why the proposed grantee procurement action would violate Federal requirements. The Regional Administrator will afford both the grantee and the complaining party, as well as any other interested party who may be adversely affected, an opportunity to present the basis for their views in writing or at a conference, and he shall promptly state in writing the basis for his determination of the protest. If the grantee proposes to award the contract or to approve award of a specified sub-item under the contract to a bidder other than the low bidder, the grantee will bear the burden of proving that its determination concerning responsiveness of the low bid is in accordance with Federal law and this subchapter; or, if the basis for the grantee's determination is a finding that the low bidder is not responsible, the grantee must establish and substantiate the basis for its determination and must establish that such determination has been made in good faith. The written determination by the Regional Administrator shall be promptly furnished to the grantee and to the complainant.

(c) *Time limitations*. Complaints should be made pursuant to paragraph (a) of this section as early as possible during the procurement process, preferably prior to issuance of an invitation for bids to avoid disruption of the procurement process: *Provided*, That a complaint authorized by paragraph (a) of this section must be mailed by certified mail (return receipt requested) or delivered no later than five working days after the bid opening. A request for review by the Regional Administrator pursuant to paragraph (b) of this section must be received by the Regional Administrator within one week after the complaining party received the grantee's adverse determination.

(d) *Deferral of Procurement Action*. Where the grantee has received a written compliant pursuant to paragraph (a) of this section, it must defer issuance of its solicitation or award or notice to proceed under the contract (as appropriate) for ten days after mailing or delivery of any written adverse determination. Where the Regional Administrator has received a written protest pursuant to paragraph (b) of this section, he must notify the grantee promptly and the grantee must defer issuance of its solicitation or award of the construction contract, as appropriate, until ten days after it receives the determination by the Regional Administrator. If a determination is made by either the grantee or the Regional Administrator which is favorable to the complainant, the terms of the solicitation must be revised or the contract must be awarded (as appropriate) in accordance with such determination.

(e) *Enforcement*. Noncompliance with the provisions of this subchapter affecting procurement will result in (1) total or partial termination of the grant pursuant to § 35.950, (2) ineligibility for grant assistance which could otherwise be awarded under this subchapter or (3) disallowance of project costs (see § 35.940–2(j)) incurred in violation of the provisions of this subchapter or applicable Federal laws, as determined by the Regional Administrator. The grantee may appeal adverse determinations by the Regional Administrator in accordance with the Disputes Article (Article 7 of Appendix A to Subchapter B of this title).

§ 35.940 Determination of allowable costs.

The grantee will be paid, upon request, in accordance with § 35.945, for the Federal share of all necessary costs within the scope of the approved project and determined to be allowable in accordance with § 30.701 of this chapter, this subpart, and the grant agreement.

§ 35.940–1 Allowable project costs.

Allocable project costs of the grantee which are reasonable and necessary are allowable. Necessary costs may include, but are not limited to:

(a) Costs of salaries, benefits, and expendable material incurred by the grantee for the project, except as provided in § 940-2(g).

(b) Costs under construction contracts.

(c) Professional and consultant services.

(d) Facility planning directly related to the treatment works.

(e) Sewer system evaluation (§ 35.927).

(f) Project feasibility and engineering reports.

(g) Costs required pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4621 et seq., 4651 et seq.), and regulations issued thereunder (Part 4 of this chapter).

(h) Costs of complying with the National Environmental Policy Act, including costs of public notices and hearings.

(i) Preparation of construction drawings, specifications, estimates, and construction contract documents.

(j) Landscaping.

(k) Supervision of construction work.

(l) Removal and relocation or replacement of utilities, for which the grantee is legally obligated to pay.

(m) Materials acquired, consumed, or expended specifically for the project.

(n) A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations.

(o) Development and preparation of an operation and maintenance manual.

(p) Project identification signs (§ 30.604–4 of this chapter).

§ 35.940–2 Unallowable costs.

Costs which are not necessary for the construction of a treatment works project are unallowable. Such costs include, but are not limited to:

(a) Basin or areawide planning not directly related to the project;

(b) Bonus payments not legally required for completion of construction in advance of a contractual completion date;

(c) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise;

(d) Fines and penalties resulting from violations of, or failure to comply with, Federal, State, or local laws;

(e) Costs outside the scope of the approved project;

(f) Interest on bonds or any other form of indebtedness required to finance the project costs;

(g) Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney, except as provided in § 35.940–4.

(h) Site acquisition (for example, sewer rights-of-way, sewage treatment plant sites, sanitary landfills and sludge disposal areas) except as otherwise provided in § 35.940–3(a).

(i) Costs for which payment has been or will be received under another Federal assistance program.

(j) Costs of equipment or material procured in violation of § 35.938–4(h).

§ 35.940–3 Costs allowable, if approved.

Certain direct costs are sometimes necessary for the contruction of a treatment works and are allowable if reasonable and approved by the Regional Administrator in the grant agreement or a grant amendment. Such costs include, but are not limited to:

(a) Land acquired after October 17, 1972, that will be an integral part of the treatment process or that will be used for ultimate disposal of residues resulting from such treatment (for example, land for spray irrigation of sewage effluent).

(b) Acquisition of an operable portion of a treatment works.

(c) Rate determination studies required pursuant to § 35.925–11.

§ 35.940–4 Indirect costs.

Indirect costs of the grantee shall be allowable in accordance with an indirect cost agreement negotiated and incorporated in the grant agreement. An indirect cost agreement must identify those cost elements allowable pursuant to § 35.940–1. Where the benefits derived from a grantee's indirect services cannot be readily determined, a lump sum for overhead may be negotiated based upon a determination that such amount will be approximately the same as the actual indirect costs that may be incurred.

§ 35.940–5 Disputes concerning allowable costs.

The grantee should seek to resolve any questions relating to cost allowability or allocation at its earliest opportunity (if possible, prior to execution of the grant agreement). Final determinations concerning the allowability of costs shall be conclusive unless appealed within 30 days in accordance with the "Disputes" article (Article 7) of the EPA General Grant Conditions (Appendix A, Subchapter B of this title).

§ 35.945 Grant payments.

The grantee shall be paid the Federal share of allowable costs incurred within the scope of an approved project, subject to the limitations of §§ 35.925–18, 35.930–5, and 35.930–6: *Provided*, That such payments must be in accordance with the payment schedule and the grant amount set forth in the grant agreement and any amendments thereto. The payment schedule will provide that payment for Step 1 and Step 2 project work will be made only on the basis of completion of the step or, if specified in the payment schedule in the grant agreement, upon completion of specific tasks within the step. All allowable costs incurred prior to initiation of construction of the project must be claimed in the application for grant assistance for that project prior to the award of such assistance or no subsequent payment will be made for such costs.

(a) *Initial request for payment.* Upon award of grant assistance, the grantee may request payment for the unpaid Federal share of actual or estimated allowable project costs incurred prior to grant award subject to the limitations of § 35.925–18, and payment for such costs shall be made in accordance with the negotiated payment schedule included in the grant agreement.

(b) *Interim requests for payment.* The grantee may submit requests for payments for allowable costs incurred in accordance with the negotiated payment schedule included in the grant agreement. Upon receipt of a request for payment, subject to the limitations set forth in § 30.602–1 of this subchapter and §§ 35.935–12, 35.935–13, and 35.935–16, the Regional Administrator shall cause to be disbursed from available appropriated funds such amounts as are necessary so that the total amount of Federal payments to the grantee for the project is equal to the Federal share of the actual or estimated allowable project costs incurred to date, as certified by the grantee in its most recent request for payment. Generally, payments will be made within 20 days after receipt of a request for payment.

(c) *Adjustment.* At any time or times prior to final payment under the grant, the Regional Administrator may cause any request(s) for payment to be reviewed or audited. Each payment theretofore made shall be subject to reduction for amounts included in the related request for payment which are found, on the basis of such review or audit, not to constitute allowable costs. Any payment may be reduced for overpayments or increased for underpayments on preceding requests for payment.

(d) *Refunds, rebates, credits, etc.* The Federal share of any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the grantee with respect to the project, to the extent that they are properly allocable to costs for which the [illegible] has been paid under a grant, must be credited to the current State allotment or paid to the United States. Reasonable expenses incurred by the grantee for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable under the grant when approved by the Regional Administrator.

(e) *Final payment.* Upon completion of final inspection pursuant to § 35.935-14 and approval of the request for payment designated by the grantee as the "final payment request" and upon compliance by the grantee with all applicable requirements of this subchapter and the grant agreement, the Regional Administrator shall cause to be disbursed to the grantees any balance of allowable project cost which has not been paid to the grantee. The final payment request must be submitted by the grantee promptly after final inspection. Prior to final payment under the grant, the grantee must execute and deliver an assignment to the United States, in form and substance satisfactory to the Regional Counsel, of the Federal share of refunds, rebates, credits or other amounts (including any interest thereon) properly allocable to costs for which the grantee has been paid by the Government under the grant, and a release discharging the United States, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to such exceptions which may be specified in the release.

§ 35.950 Suspension or termination of grants.

Grants may be suspended, in accordance with § 30.902 of this subchapter and Article 4 of the General Grant Conditions (Appendix A to this subchapter), or terminated, in accordance with § 30.903 of this subchapter and Article 5 of the General Grant Conditions (Appendix A of this subchapter). The State agency shall be concurrently notified in writing of any such suspension or termination action.

§ 35.955 Grant amendments to increase grant amounts.

Grant agreements may be amended in accordance with § 30.901 of this chapter with respect to project changes which have been approved in accordance with § 30.900 and § 35.935-11 of this subchapter: *Provided,* That no grant agreement may be amended to increase the amount of a grant unless the State agency has approved the grant increase from available State allotments and reallotments in accordance with § 35.915.

§ 35.960 Disputes.

Final determinations by the Regional Administrator concerning ineligibility of projects for which priority has been determined in accordance with § 35.915 and final determinations by the Regional Administrator concerning disputes arising under a grant pursuant to this subpart shall be final and conclusive unless appealed by the applicant or grantee within 30 days from the date of receipt of such final determination in accordance with the "Disputes" article of General Grant Conditions (Article 7 of Appendix A to this subchapter).

APPENDIX A

COST EFFECTIVENESS ANALYSIS GUIDELINES

a. *Purpose.*—These guidelines provide advisory information concerning basic methodology for determining the most cost-effective waste treatment management system or the most cost-effective component part of any waste treatment management system.

b. *Authority.*—The guidelines contained herein are provided pursuant to section 212 (2)(C) of the Federal Water Pollution Control Act Amendments of 1972 (the Act).

c. *Applicability.*—These guidelines apply to the development of plans for and the selection of component parts of a waste treatment management system for which a Federal grant is awarded under 40 CFR, Part 35.

d. *Definitions.*—Definitions of terms used in these guidelines are as follows:

(1) *Waste treatment management system.*—A system used to restore the integrity of the Nation's waters. Waste treatment management system is used synonymously with complete waste treatment system as defined in 40 CFR, Part 35.905-3.

(2) *Cost-effectiveness analysis.*—An analysis performed to determine which waste treatment management system or component part thereof will result in the minimum total resources costs over time to meet the Federal, State or local requirements.

(3) *Planning period.*—The period over which a waste treatment management system is evaluated for cost-effectiveness. The planning period commences with the initial operation of the system.

(4) *Service life.*—The period of time during which a component of a waste treatment management system will be capable of performing a function.

(5) *Useful life.*—The period of time during which a component of a waste treatment management system will be required to perform a function which is necessary to the system's operation.

e. *Identification, selection and screening of alternatives*—(1) *Identification of alternatives.*—All feasible alternative waste management systems shall be initially identified. These alternatives should include systems discharging to receiving waters, systems using land or subsurface disposal techniques, and systems employing the reuse of wastewater. In identifying alternatives, the possibility of staged development of the system shall be considered.

(2) *Screening of alternatives.*—The identified alternatives shall be systematically screened to define those capable of meeting the applicable Federal, State, and local criteria.

(3) *Selection of alternatives.*—The screened alternatives shall be initially analyzed to determine which systems have cost-effective potential and which should be fully evaluated according to the cost-effectiveness analysis procedures established in these guidelines.

(4) *Extent of effort.*—The extent of effort and the level of sophistication used in the cost-effectiveness analysis should reflect the size and importance of the project.

f. *Cost-effective analysis procedures*—(1) *Method of Analysis.*—The resources costs shall be evaluated through the use of opportunity costs. For those resources that can be expressed in monetary terms, the interest (discount) rate established in section (f)(5) will be used. Monetary costs shall be calculated in terms of present worth values or equivalent annual values over the planning period as defined in section (f)(2). Nonmonetary factors (e.g., social and environmental) shall be accounted for descriptively in the analysis in order to determine their significance and impact.

The most cost-effective alternative shall be the waste treatment management system determined from the analysis to have the lowest present worth and/or equivalent annual value without overriding adverse nonmonetary costs and to realize at least identical minimum benefits in terms of applicable Federal, State, and local standards for effluent quality, water quality, water reuse and/or land and subsurface disposal.

(2) *Planning period.*—The planning period for the cost-effectiveness analysis shall be 20 years.

(3) *Elements of costs.*—The costs to be considered shall include the total values of the resources atributable to the waste treatment management system or to one of its component parts. To determine these values, all monies necessary for capital construction costs and operation and maintenance costs shall be identified.

Capital construction costs used in a cost-effectiveness analysis shall include all contractors' costs of construction including overhead and profit; costs of land, relocation, and right-of-way and easement acquisition; design engineering, field exploration, and engineering services during construction; administrative and legal services including costs of bond sales; startup costs such as operator training; and interest during construction. Contingency allowances consistent with the level of complexity and detail of the cost estimates shall be included.

Annual costs for operation and maintenance (including routine replacement of equipment and equipment parts) shall be included in the cost-effectiveness analysis. These costs shall be adequate to ensure effective and dependable operation during the planning period for the system. Annual costs shall be divided between fixed annual costs and costs which would be dependent on the annual quantity of wastewater collected and treated.

(4) *Prices.*—The various components of cost shall be calculated on the basis of market prices prevailing at the time of the cost-effectiveness analysis. Inflation of wages and prices shall not be considered in the analysis. The implied assumption is that all prices involved will tend to change over time by approximately the same percentage. Thus, the results of the cost effectiveness analysis will not be affected by changes in the general level of prices.

Exceptions to the foregoing can be made if there is justification for expecting significant changes in the relative prices of certain items during the planning period. If such cases are identified, the expected change in these prices should be made to reflect their future relative deviation from the general price level.

(5) *Interest (discount) rate.*—A rate of 7 percent per year will be used for the cost-effectiveness analysis until the promulgation of the Water Resources Council's "Proposed Principles and Standards for Planning Water and Related Land Resources." After promulgation of the above regulation, the rate established for water resource projects shall be used for the cost-effectiveness analysis.

(6) *Interest during construction.*—In cases where capital expenditures can be expected to be fairly uniform during the construction

period, interest during construction may be calculated as I × ½ P × C where:

I = the interest (discount) rate in Section f(5).
P = the construction period in years.
C = the total capital expenditures.

In cases when expenditures will not be uniform, or when the construction period will be greater than three years, interest during construction shall be calculated on a year-by-year basis.

(7) *Service life.*—The service life of treatment works for a cost-effectiveness analysis shall be as follows:

Land	Permanent
Structures (includes plant buildings, concrete process tankage, basins, etc.; sewage collection and conveyance pipelines; lift station structures; tunnels; outfalls)	30–50 years
Process equipment (includes major process equipment such as clarifier mechanisms, vacuum filters, etc.; steel process tankage and chemical storage facilities; electrical generating facilities on standby service only)	15–30 years
Auxiliary equipment (includes instruments and control facilities; sewage pumps and electric motors; mechanical equipment such as compressors, aeration systems, centrifuges, chlorinators, etc.; electrical generating facilities on regular service)	10–15 years

Other service life periods will be acceptable when sufficient justification can be provided.

Where a system or a component is for interim service and the anticipated useful life is less than the service life, the useful life shall be substituted for the service life of the facility in the analysis.

(8) *Salvage value.*—Land for treatment works, including land used as part of the treatment process or for ultimate disposal of residues, shall be assumed to have a salvage value at the end of the planning period equal to its prevailing market value at the time of the analysis. Right-of-way easements shall be considered to have a salvage value not greater than the prevailing market value at the time of the analysis.

Structures will be assumed to have a salvage value if there is a use for such structures at the end of the planning period. In this case, salvage value shall be estimated using straightline depreciation during the service life of the treatment works.

For phased additions of process equipment and auxiliary equipment, salvage value at the end of the planning period may be estimated under the same conditions and on the same basis as described above for structures.

When the anticipated useful life of a facility is less than 20 years (for analysis of interim facilities), salvage value can be claimed for equipment where it can be clearly demonstrated that a specific market or reuse opportunity will exist.

APPENDIX B

FEDERAL GUIDELINES

USER CHARGES FOR OPERATION AND MAINTENANCE OF PUBLICLY OWNED TREATMENT WORKS

(a) *Purpose.*—To set forth advisory information concerning user charges pursuant to Section 204 of the Federal Water Pollution Control Act Amendments of 1972, PL 92-500, hereinafter referred to as the Act. Applicable requirements are set forth in Subpart E (40 CFR Part 35).

(b) *Authority.*—The Authority for establishment of the user charge guidelines is contained in section 204(b)(2) of the Act.

(c) *Background.*—Section 204(b)(1) of the Act provides that after March 1, 1973, Federal grant applicants shall be awarded grants only after the Regional Administrator has determined that the applicant has adopted or will adopt a system of charges to assure that each recipient of waste treatment services will pay its proportionate share of the costs of operation and maintenance, including replacement. The intent of the Act with respect to user charges is to distribute the cost of operation and maintenance of publicly owned treatment works to the pollutant source and to promote self-sufficiency of treatment works with respect to operation and maintenance costs.

(d) *Definitions.*—(1) *Replacement.*—Expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary to maintain the capacity and performance during the service life of the treatment works for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

(2) *User charge.*—A charge levied on users of treatment works for the cost of operation and maintenance of such works.

(e) *Classes of users.*—At least two basic types of user charge systems are common. The first is to charge each user a share of the treatment works operation and maintenance costs based on his estimate of measured proportional contribution to the total treatment works loading. The second system establishes classes for users having similar flows and waste water characteristics; i.e., levels of biochemical oxygen demand, suspended solids, etc. Each class is then assigned its share of the waste treatment works operation and maintenance costs based on the proportional contribution of the class to the total treatment works loading. Either system is in compliance with these guidelines.

(f) *Criteria against which to determine the adequacy of user charges.*—The user charge system shall be approved by the Regional Administrator and shall be maintained by the grantee in accordance with the following requirements:

(1) The user charge system must result in the distribution of the cost of operation and maintenance of treatment works within the grantee's jurisdiction to each user (or user class) in proportion to such user's contribution to the total wastewater loading of the treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included as the basis for the user's contribution to ensure a proportional distribution of operation and maintenance costs to each user (or user class).

(2) For the first year of operation, operation and maintenance costs shall be based upon past experience for existing treatment works or some other rational method that can be demonstrated to be applicable.

(3) The grantee shall review user charges annually and revise them periodically to reflect actual treatment works operation and maintenance costs.

(4) The user charge system must generate sufficient revenue to offset the cost of all treatment works operation and maintenance provided by the grantee.

(5) The user charge system must be incorporated in one or more municipal legislative enactments or other appropriate authority. If the project is a regional treatment works accepting wastewaters from treatment works owned by others, then the subscribers receiving waste treatment services from the grantee shall have adopted user charge systems in accordance with this guideline. Such user charge systems shall also be incorporated in the appropriate municipal legislative enactments or other appropriate authority.

(g) *Model user charge systems.*—The user charge system adopted by the applicant must result in the distribution of treatment works operation and maintenance costs to each user (or user class) in approximate proportion to his contribution to the total wastewater loading of the treatment works. The following user charge models can be used for this purpose; however, the applicant is not limited to their use. The symbols used in the models are as defined below:

C_T = Total operation and maintenance (O. & M.) costs per unit of time.
C_u = A user's charge for O. & M. per unit of time.
C_s = A surcharge for wastewaters of excessive strength.
V_c = O&M cost for transportation and treatment of a unit of wastewater volume.
V_u = Volume contribution from a user per unit of time.
V_T = Total volume contribution from all users per unit of time.
B_c = O&M cost for treatment of a unit of biochemical oxygen demand (BOD).
B_u = Total BOD contribution from a user per unit of time.
B_T = Total BOD contribution from all users per unit of time.
B = Concentration of BOD from a user above a base level.
S_c = O&M cost for treatment of a unit of suspended solids.
S_u = Total suspended solids contribution from a user per unit of time.
S = Concentration of SS from a user above a base level.
P_c = O&M cost for treatment of a unit of any pollutant.
P_u = Total contribution of any pollutant from a user per unit of time.
P_T = Total contribution of any pollutant from all users per unit of time.
P = Concentration of any pollutant from a user above a base level.

(1) *Model No. 1.*—If the treatment works is primarily flow dependent or if the BOD, suspended solids, and other pollutant concentrations discharged by all users are approximately equal, then user charges can be developed on a volume basis in accordance with the model below:

$$C_u = \frac{C_T}{V_T}(V_u)$$

(2) *Model No. 2.*—When BOD, suspended solids, or other pollutant concentrations from a user exceed the range of concentration of these pollutants in normal domestic sewage, a surcharge added to a base charge, calculated by means of Model No. 1, can be levied. The surcharge can be computed by the model below:

$$C_s = [B_c(B) + S_c(S) + P_c(P)]V_u$$

(3) *Model No. 3.*—This model is commonly called the "quantity/quality formula":

$$C_u = V_cV_u + B_cB_u + S_cS_u + P_cP_u$$

(h) *Other considerations.*—(1) Quantity discounts to large volume users will not be acceptable. Savings resulting from economies of scale should be apportioned to all users or user classes.

(2) User charges may be established based on a percentage of the charge for water usage only in cases where the water charge is based on a constant cost per unit of consumption.

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